

**AN APPRAISAL OF JUDICIAL ATTITUDE TO INTRA-
PARTY DISPUTES ON NOMINATION OF CANDIDATES
IN NIGERIA**

BY

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**BEING A DISSERTATION SUBMITTED TO THE SCHOOL OF
POSTGRADUATE STUDIES, THROUGH THE FACULTY OF
LAW, BAYERO UNIVERSITY KANO, IN PARTIAL
FULFILLMENT FOR THE AWARD OF THE DEGREE OF
MASTER OF LAWS (LL.M)**

DECEMBER, 2015

DECLARATION

I, Aisha RabiU Ukashatu, hereby declare that this dissertation is the result of my efforts, undertaken under the guidance and supervision of Dr. N.A Ahmad, and to the best of my knowledge, all sources, have been necessarily and adequately acknowledged. I also declare that this dissertation has never in whole or in part been presented for consideration for the award of an LL.M Degree in this or any other faculty within Bayero University, Kano or elsewhere.

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CERTIFICATION

This is to certify that the research work for this dissertation titled “An appraisal of judicial attitude to intra-party disputes on nomination of candidates in Nigeria” and all preparations necessary thereto by Aisha Rabiuk Ukashatu (SPS/11/MLL/00028) were carried out under my supervision.

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APPROVAL

This dissertation, “An Appraisal of Judicial Attitude to intra-party Disputes on Nomination of Candidates in Nigeria” by Aisha Rabi Ukashatu has been examined by us and we hereby approve it for the award of the degree of Master of Laws (LL.M).

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DEDICATION

This research work is dedicated to Hajiya Amina Shuaibu for all the motherly love she has shown towards me. May her soul rest in peace, and may Allah grant her Aljannah.

ACKNOWLEDGEMENTS

My deepest appreciation and praise goes to Allah (SWA) for making this research work a success. With my tight schedule it wouldn't have been possible to complete this research work without the hands of Allah in it.

I acknowledge my father Alhaji Rabi'u Ukashatu, who has never relented in his efforts as a father. May Allah continue to give him good health and bestow His blessings upon him.

I appreciate my mother, for her prayers. May Allah keep her for us and continue to make her happy.

I remain indebted to my supervisor Malam Nasiru Ahmad, who is like a father to me. He is indeed a rare personality and I thank God for having the privilege of being supervised by Him. Without him, this research work wouldn't have been a success. I thank him for his patience, timely approvals of my work to ensure I beat the deadline.

I must acknowledge my lecturers in the Faculty of Law, who all gave me support and encouragement to do this research work. I must thank Malam Yusufari, for all the encouragement, materials, and brotherly advice. May Allah continue to reward him.

I must also thank Mallam Zunnurain for always asking about the progress report of my work, for making sure I complete this research work and not abandoning it half away. His advice is part of my success story.

My deepest appreciation goes to Malam B.A Haruna for always being there to proffer his advices.

My special thanks to Mallama Aisha Warshu for all her sisterly advice, for always giving a helping hand whenever I need her. I must thank you mallama, you are the best.

I can't forget Mallam A.B Ahmad for making this research work a success, for giving me all the materials that I needed.

I also say a big thank you to mallama Juwairiyya who is a mother and a role model. I also acknowledge the fathers of the faculty Prof. A.H Yadudu, Prof. Tabiu and Malam Aminu Kabir. May Allah continue to be with them.

I must acknowledge my family, especially my lovely sisters for always being there for me. You are all anyone can ask for. Love you all.

Amana Muhammad Yusuf, no amount of thank you can quantify my appreciation for all you have done to make this research work a success. May Allah reward you.

My brother Musa Adamu Aliyu deserves a special thank you; for shedding more light on the topic when I get stuck, and always there to help. May Allah continue to bless you.

My special thanks also goes to my brother Dr. Nasiru Adamu Aliyu for being there at all times.

My lovely son Aman, thank you for your patience during the tight schedule of the work.

To every other person who has impacted in my life whom space and time would not permit me to specifically acknowledge, I say a big thank you.

Aisha Rabi'u Ukashatu

Faculty of Law, BUK, May, 2015

TABLE OF CONTENTS

TITLE PAGE	i
DECLARATION	ii
CERTIFICATION	iii
APPROVAL	iv
DEDICATION	v
ACKNOWLEDGEMENTS	vi
TABLE OF CONTENTS	viii
ABSTRACT	xvi
CHAPTER ONE	1
GENERAL INTRODUCTION	1
1.1 BACKGROUND OF THE STUDY	1
1.2 STATEMENT OF THE PROBLEM	9
1.3 RESEARCH QUESTIONS	10
1.4 AIM AND OBJECTIVES OF THE RESEARCH	11
1.5 JUSTIFICATION OF THE RESEARCH	11
1.6 SCOPE OF THE RESEARCH	11
1.7 RESEARCH METHODOLOGY	12
1.8 LITERATURE REVIEW	12
1.9 ORGANIZATIONAL LAYOUT	16
CHAPTER TWO	18
THE INSTITUTIONAL AND LEGAL FRAMEWORK FOR PRE-ELECTIONS IN NIGERIA	18
2.1 INTRODUCTION	18
2.2 THE 1999 CONSTITUTION (AS AMENDED)	19
2.3 THE ELECTORAL ACT 2010(AS AMENDED)	33
2.4 THE INDEPENDENT ELECTORAL COMMISSION (INEC)	42
2.5 POLITICAL PARTY CONSTITUTION	46
2.6 RULES OF COURT	48
2.7 COMMENCEMENT OF PRE-ELECTION DISPUTES IN THE COURT.	50
2.7.1 DETERMINATION OF PRE-ELECTION DISPUTES IN THE COURTS.	54
2.8 CONCLUSION	58
CHAPTER THREE	60

THE LEGAL PROCEDURE FOR NOMINATION OF CANDIDATES	60
3.1 INTRODUCTION	60
3.2 NOMINATION OF CANDIDATES TO ELECTIVE POSITIONS BY POLITICAL PARTIES	61
3.3 PROCEDURE FOR NOMINATION UNDER SOME POLITICAL PARTY CONSTITUTION	68
3.3.1 PROCEDURE FOR NOMINATION IN THE PEOPLES DEMOCRATIC PARTY(PDP)	73
3.3.2 PROCEDURE FOR NOMINATION IN ALL PROGRESSIVE ONGRESS APC)	83
3.3.3 PROCEDURE FOR NOMINATION IN ALL PROGRESSIVE GRAND ALLIANCE (APGA)	87
3.3.4 ROLE OF POLITICAL PARTIES IN NOMINATION	88
3.4 PROCEDURE FOR NOMINATION UNDER THE ELECTORAL ACT 2010(As Amended)	91
3.5 PROCEDURE FOR NOMINATION BY INEC	92
3.5.1 THE ROLE OF INEC IN NOMINATION PROCEDURE	96
3.6 CONCLUSION	99
CHAPTER FOUR	101
JUDICIAL ATTITUDE ON NOMINATION OF CANDIDATES	101
4.1 INTRODUCTION	101
4.2 PRE- ELECTION MATTERS	102
4.3 JURISDICTION OF COURTS OVER PRE-ELECTION DISPUTES	104
4.4 RIGHTS OF AN ELECTORAL CANDIDATE	106
4.5 PRE-ELECTION DISPUTES WITHIN THE POWERS OF COURTS	108
4.5.1 THE BASIS FOR COURTS NOT ENTERTAINING PRE-ELECTION DISPUTES	109
4.6 JUDICIAL APPROACH TO INTRA-PARTY DISPUTES	111
4.7 DISTINCTION BETWEEN NOMINATION AND SUBSTITUTION OF CANDIDATES.	122
4.7 SUBSTITUTION OF CANDIDATES BY POLITICAL PARTIES.	123
4.9 CASES ON NOMINATION AND SUBSTITUTION OF CANDIDATES	125
4.10 CONCLUSION	144
CHAPTER FIVE	146
SUMMARY AND CONCLUSION	146
5.1 SUMMARY	146
5.2 CONCLUSION	148
5.3 FINDINGS	148

5.4 RECOMMENDATIONS	151
BIBLIOGRAPHY	153

LIST OF CASES

ABDULKADIR V MAMMAN (2003) 14 NWLR (PT. 836) 1

ABUBKAR MAHMUD WAMBAI V. DR. KIZAYA DONATUS (2014) NWLR (PT.1427) 223.

ABUBAKAR V NASAMU (2012) 17 NWLR (PT. 1330) 407

ACTION CONGRESS OF NIGERIA & ANOR. V INEC [2007] NWLR (PT. 1048) 26

ADEBAYO V. PDP (2013) 17 NWLR(PT.1382) SC

ADEBUYI V MUSTAPHA (2011) 2 NWLR

AGBAKOB A V INEC (2008) 18 NWLR (PT. 489)1119

AKPAN V BOB (2010) 17 NWLR (PT.1223) 55

ALL PROGRESSIVE GRAND ALLIANCE (APGA) V SENATOR CHRISTIANA N.D. ANYANWU & 2 ORS (2014) SC. 201/2013

AMAECHI V INEC (2008) 33 NSCQ 332 AT 585

BAKER V CARR 369 US 186 (1962)

BALONWU &ORS V IKPEAZU (2005) 13 NWLR (PT. 947) 75 AT 112

BARRISTER VINCENT OSAKWE V INEC & ORS. (2005) 13 NWLR (PT.942)

BUHARI V INEC (2008)19 NWLR (PT.11200) 246 AT 393

BUHARI V OBASANJO (2005) 13 NWLR (PT. 941)1 AT 210

BWACHA V IKENYA & ORS (2011) LRCN VOL. 191 (PT. 4)

CHIME V EZRA (2009) 2 NWLR (PT.1125)

CHIEF FRANCIS UCHENNA UGWU & ORS V. PEOPLES DEMOCRATIC PARTY & ORS. SC. 130/2013

CPC V LADO DANMARKE (2012) ALL FWLR (PT.607) 598

DALHATU V TURAKI 2003) 15 NWLR (PT. 843) 310

DR. CHRIS NGIGE V. PETER OBI& 4 ORS (2006) ALL FWLR (PT. 330)

DR CHRIS NWACHUKWU NGIGE V MR PETER OBI& 4ORS (2006) ALL FWLR(PT .330) PG. 1041 AT 1169-1170.

EHINLAWO V OKE& 2 ORS (2008) LRCN VOL. 165 (PT. 177)

EGOLUM V OBASANJO (1999) 7 NWLR(PT. 611) 355

EMEKA V OKADIGBO (2012)18 NWLR (PT.1316)55

EMENIKE V . PDP (2012) 12 NWLR(PT.1315) 556

ENEMOU V DURU & SONS 2004) 9 NWLR (PT. 877) 112

ETIM V OBOT (2010) 12 NWLR (PT.1207)

EZEOBI V NZEKA (1989) 1 NWLR (PT. 98)

FRANK OKON V INEC SC.757/2013

HASKE V MOGAJI (2008) 3 LREC PG. 127 AT 130

HASSAN V ALIYU (2010) 18 NWLR (PT. 1223) 547

JENKINS GIANE DUVIE GWEDE VS. INEC & 3 ORS SC/255/2013

KALGO V FARUK .(2009) ALL FWLR (PT. 475) 1752 AT 1769

KALU IGU UDUMA V. PRINCE ARUA ARUNSI & 14 ORS (2012) 7 NWLR PT 55

KUBUR V DICKSON(2013) 4 NWLR(PT. 541)

MADUEMEZIA V UWAJE (2015) LPER-24542(CA) SUIT NO: CA/B/434/2013

MOHAMMED HASSAN RIMI V INEC & ORS (2005)6 NWLR(PT. 920)

NAGOGO V CPC (2014) SC 589/2013

NICHOLAS CHUKWUJEKWU UKACHUKWU V. PEOPLES DEMOCRATIC PARTY & 3 ORS (2013)4 NWLR

NWACHUKWU V MR.PETER OBI (2006) ALL FWLR(PT.330)

ODEDU V INEC (2010) 9 NWLR (PT.1200)602

OKOLI N MBADIWE (1985)6 NCLR 742

OLLEY V.TUNJI (2013) 10 NWLR(PT. 288)

OMBUGADU V. CPC (2013) 3 NWLR

OMIDIRAN V ETTEH (2011) 2 NWLR (PT.1232)

ONOUHA V OKAFOR (1983) SCNLR 244

ORHENA ADUGU GBILEVE & ANOR VS MRS. NGUNAN ADDINGI & ANOR
SC. 193/2012

OZIGBO V P.D.P (2010) 9 NWLR (PT.1200)601

PDP V TIMIPRE SILVA & 3 ORS(2012) 13 NWLR (PT.1316) 85

P.P.A V INEC (2010)12 NWLR (PT.1203)70

RIMI & ANOR V AMINU KANO (1982) 3 N.C.L.R 478

SALIM V. CPC . 2013) 6 NWLR (PT. 1351) 501

SAULAWA V KABIR (2011) 2 NWLR (PT.1232) 417

SENATOR CHRISTIANA N.D ANYANWU V HON. INDEPENDENCE
CHIEDOZIEM OGUNEWE & 2 ORS. (2014)SC.20/2013

SHETTIMA V. GONI (2011) 18 NWLR(PT.1279) 413

SULAIMAN USMAN &ANOR V ALHAJI MUHAMMAD MACCIDO & ORS2
(2009) LPELR CA/K/EP/NA70/70

TUKUR V UBA (2013)4 NWLR(PT.7)

TSOHO V YAHAYA 6 (1994) 4 NWLR (PT. 600)657

UBA V UKACHUKWU (2004) 10 NWLR

UGWU V ARARUME (2007) 12 NWLR (PT. 1048) 367

UMAR V ONOKATA (1999)3 MWLR (PT.596)558

USANI V DONAALD DUKE (2004) 7 NWLR (PT. 871) 116

ABBREVIATIONS

APC	All Progressive Congress
All FWLR	All Federation Weekly Law Report
APGA	All Progressive Grand Alliance
INEC	Independent National Electoral Commission
NWLR	Nigeria Weekly Law Report
NCLR	Nigeria Constitutional Law Report
PDP	Peoples Democratic Party
SC	Supreme Court

LIST OF STATUTES

The 1999 Constitution (As Amended)

Electoral Act 2002

Electoral Act 2006

Electoral Act 2010(As Amended)

POLITICAL PARTY CONSTITUTIONS

Peoples Democratic Party Constitution (PDP)

All Progressive Grand Alliance Constitution (APGA)

Action Progressive Congress (APC)

ABSTRACT

This research work examined judicial attitude to intra-party disputes on nomination of candidates in Nigeria. The research came up as a result of what exists in political parties as it relates to nomination and sponsorship of candidates with a view to analyzing the attitude of courts when faced with pre-election disputes. In spite of the guidelines as provided by the constitution of the Federal Republic of Nigeria, the Electoral Act, Political Party Constitutions, and INEC, most political parties in Nigeria tend to conduct their various primary elections without recourse to these laws regulating the nomination, substitution and sponsorship of candidates. This is as a result of lack of internal party democracy to deal with intra-party conflicts. The concern of this work was to examine the attitude of courts and the flawed decision of the courts on pre-election disputes. The methodology adopted in this research was using statutes, decided cases and relevant literatures. The courts have held in several cases that they do not have jurisdiction on political party affairs. They are intra-party issues within the powers of political parties and therefore pre-primary disputes before the courts are struck out. Having analyzed the relevant provisions of the law and cases, it was pointed out that attitude of courts in pre-election matters on nomination of candidates is still restrictive; courts will not dabble in the affairs of political parties. It was the finding of this research work that in most cases, there is outright refusal by the courts to entertain pre-election disputes. The research recommends areas that need to be worked upon. Since the Constitution and the Electoral Act give candidates the right to seek redress in the courts, then the courts should invoke the spirit of judicial activism to entertain intra-party or pre-election disputes in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Democracy as a system of government rests on the assumption that sovereignty rests in the people who merely delegate the rights inherent in that sovereignty to elected representatives.¹ For the elected representatives to be responsive to the need and yearnings of the people, they must undergo periodic election. There is no doubt elections play vital role in a system of representative democracy. They are the primary mechanism with which to implement the principle of popular sovereignty.²

A country's democratic maturity can be assessed by the transparent manner in which elections are conducted in that country, in accordance with the rule of law and in obedience to acceptable international norms. To be free, participation in elections must be conducted in an atmosphere characterized by absence of intimidation, the presence of wide range of fundamental human rights, such as the freedom of expression, information, opinion, protection of violence and all forms of discrimination³. Party system is one of the essential tools for democracy. In all democracies, conflict is inevitable. This is true because democracy seeks the effective ways through which a society should be governed, borne not out of contest either internally or externally. Conflict results whenever two or more persons seek to possess the same object or occupy the same position and play incompatible means of achieving their purposes.⁴

¹ Igbuzor O., Perspective on Democracy and Development Joe-Tolalu&Associates,Lagos,2005. p.2

² ibid, p.12

³ Ladan M.T., Enforcement of Electoral Law and Electoral Violence in Nigeria: Being a paper presentation at a 2-Day Seminar on Enforcement of Electoral Law and Reduction Of Electoral Violence in Nigeria, Chelsea Hotel, Abuja, 11 - 13 July, 2006.

⁴ Michael B.A., Intra Party Conflicts in Nigeria: The case study of People's Democratic Party (PDP). Journal of Sustainable Development in Africa, Vol. 15, 2013

Nigeria embraces democracy as a system of governance in which case popular election becomes a necessity. The constitution provides that the country “shall be a state based on the principles of democracy and social justice.”⁵

Democracy as the name implies is a form of government that is composed of ideals and principle. These ideals are the very ingredients that make it different from other forms of government. It is now acknowledged that the distinguishing factor between democracy and other forms of governance is periodic election. Some of these principles are the freedom of speech, freedom of association, equality before the law, the existence of a constitution usually a written constitution which is based on the rule of law. It also entails the observance of rule of law by all persons and authorities in a country and the holding of regular periodic free and fair elections, the existence of a party system, the equal right of all eligible citizens to vote and be voted for, the guarantee and respect for fundamental human rights as entrenched in the constitution, the doctrine of separation of powers, checks and balances in government, and an active independent judiciary. Democracy also entails the limitation of tenure of elected officials, election at regular intervals, the existence of an independent electoral body.⁶

These are the very principle that makes up democracy. Without these principles, democracy ceases to exist. Without the rule of law democracy is impracticable, and in realizing good governance. Essentially, where democracy has a positive outcome, it is because the enabling environment for the flourishing of the rule of law is provided, nurtured and respected by the institutions of political parties, the executive, legislature, and the judiciary.

⁵ Section 14 (1)1999 Constitution (As Amended)

⁶ Ese M., The Nigerian Constitutional Law, Princeton Publishing co.,Lagos.2010, p. 32

Democracy is being tested when elections are held and all its principles are abided by electorates or citizens of a given country. Election exercise has therefore gained great attention to such an extent that it has become the rudiment of any democratic system, as the vote of citizens is not only central to democracy but an expression of their equality, right to choice and strengthening of popular participation in government. This participation is done through the conduct of elections. Electoral processes involve pre-election, Election, and post-election activities.

Sustainable constitutional democracy in any society depends largely on good party ideologies, credible elections, and an independent courageous and incorruptible judiciary. In Nigeria, disputes often arise from electoral process; whether pre or post-election resulting mostly from the conduct of elections. The primary objective of democracy is to give the people the opportunity to participate and make choices regarding their affairs. Elective positions are contested through political parties. Political parties are essential in every democratic society. They are organs of political discussion and formulation of ideas and policies⁷. It is right to say that political parties are indispensable tools in Election and Democracy as a whole as they are the agent of democracy. They are an essential component of democracy. Political parties are a central feature of any democracy. They are the vehicles by which citizens come together freely to campaign for public office, express their interests and needs, and define their aspirations for their society. While there are parties without democracy, there can be no democracy without political parties. Parties in many countries may be flawed, but they are also indispensable in democratic governance. In addition, political parties train and nominate political leaders who will assume a role in governing society. Through their efforts to control and influence public policy,

⁷ Nwankama B., and Ngozi O., *Laws Governing Elections and Petitions in Nigeria*, Edu-Edy publications, Owerri, 2007. p. 27

political parties play an intermediary role, linking the institutions of government to economic, ethnic, cultural, and religious and other societal groups. They have become one of the pillars of democracy and a major and important vehicle for actualizing the democratic principle of popular mandate and responsible representation.

If political parties are important ingredients of democracy, it goes without saying that the organization of political parties and the modus operandi of their operations should embody the democratic ideals they fight to enthrone in the polity. Political parties exist to facilitate and make this participation of the citizenry in governance possible and easier. Political parties as agency of democracy and democratization, needs to be democratic itself in its organization and procedures. Thus, to be democratic in itself, political parties all over the world have devised mechanisms for running its affairs. Section 222 1999 Constitution (As Amended), provides that membership is crucial to political parties. Each political party must also have a constitution containing rules guiding its affairs⁸, especially with regards to selection of candidates for elections within and outside their parties. It is essential that party members submit themselves to their constitution.

Political parties need clear internal management and communication structures that are well known and understood by members. Their survival also depends on their ability to recruit members, raise funds, and explain their principles and policies to members, the media, and the public. Furthermore, transparent and participative means of selecting candidates, electing leaders, and formulating policy can make parties more open, responsive and attractive to citizens. This is mostly done through its constitution. Political party constitution should contain the party's disciplinary procedure, ideologies, periodic election of officers, procedure for amendment, and

⁸ section 223 1999 Constitution (As Amended)

procedure for nominating its candidates into elective offices. Political parties provide rules and guidelines for choosing leaders and candidates for elective offices, the most democratic of them being the use of party primaries. A party primary is the initial electoral contest amongst candidates for the purpose of winning the nominations of their parties for the general contest. This is in tandem with the procedural or minimalist definition of democracy that defines democracy pragmatically as the selection of leaders through competitive elections by the people they govern. As election has become acceptable means of choosing leaders or occupants of public office in a democracy, political parties as vehicles for democratization and democracy should showcase democracy in their internal decision making and selection of leaders/candidates for election. It is true that political parties are vested with the power to present candidates for political positions and substitute candidates in deserving circumstances; however, the power must be exercised in line with laid down rules.

However, it has been observed that while parties rely on democratic principle of popular mandate to contest and win elections, many of them rarely reflect this principle in their organizational structures and administration, especially with regards to selection of party leaders and candidates for elective positions, thus raising concern on the issue of intra-party democracy.

Internal party democracy is the extent to which a party is democratically organized and eventually compared among other parties. It means that party structure and organization are participatory and inclusive, and are essentially vehicles for the exercise of nascent democratic leadership and values⁹. Lack of internal democracy is the cause of party disputes. Where there are no issues within a party, there will be no pre-election nor party disputes. This is because pre-election disputes come up on

⁹ "Elections, Internal Party Democracy and Nigeria's Economic Development" p.12 available at <http://www.valuefronteironline.com> (last visited 11th March 2015)

issues between party members before elections are conducted. A key issue in intra-party democracy is the nomination process. It is the measuring guide for understanding the power distribution among different organs and factions in a party. The problem of political parties has always been an attempt by politicians to sideline their political party guidelines, constitutions or the Electoral Act.

Failure of political parties to ensure intra-party democracy and live by the provisions of the constitution and their own Constitution as to the emergence of candidates for elections is one of the major causes hindering the enthronement of representative government. What may have firstly informed this development is the collapse of internal democracy in Nigeria's political parties. The problem of election in Nigeria is not only on the credibility of elections, the problem first and foremost hinges on lack of internal (intra-party) democracy in political parties. Intra and inter party disputes or grievances weaken political party and the political system. Inter and intra party relationships are vital because they determine how well our party system is and the extent of our country's democracy. Therefore, the need for political parties to adhere to the principles and practice of internal party democracy cannot be over emphasized. Internal party democracy does not only affect the credibility of the elections in a country, but also the quality of leadership, governance and economic development of that country¹⁰. Lack of Internal Party Democracy may be more of a destabilizing rather than a stabilizing element of democracy.

On the Need for Political parties to do everything possible to entrench internal democracy in their dealings with their members, Per Onnoghen, JSC, in *Olley v Tunji*¹¹ stated;

It is important that political parties must do everything

¹⁰ Salih M.A., *The Challenges of Internal Party Democracy in Africa* in UNDP: A Hand Book on Working with Political Parties, New York UNDP at 54-55, 2006.

¹¹ (2013) 10 NWLR(pt.288) p. 328

*possible to entrench internal democracy in their dealings
with their members and also strive very hard to earn credibility
in the conduct of their primary elections so that the court
can believe and rely on the result declared by the party following
nomination exercise.*

Credible Election is not only hinged on casting and counting of votes. Credible Election is hinged primarily on a well-developed Internal Party Democracy. The quest for enthronement of Internal Democracy among registered political parties especially as it relates to party primaries led to amendments and insertion of relevant sections in the Electoral Act on nomination and substitution of candidates in political parties. Before the enactment of the Electoral Act 2010 (As Amended), stake holders had argued that Nigeria needs an Electoral Law that will incorporate procedures and steps that will guarantee Internal Democracy. Lack of internal party democracy varies from issues of zoning in a party, party funding, candidate selection, conducting primaries and the choice of a party.

Nomination of candidates forms part of the preliminary matters in pre- election disputes. Primary elections and substitution of candidates is one major test of any party's internal democracy. The choice of candidate is the sole responsibility of political parties. It is the domestic affair of political party to select who its candidates will be at an election. Most of the time however, names are substituted either before or after submission of valid nominated names to Independent National electoral commission (INEC). These had led to conflicts resulting to the fractionalization of some major political parties and the consequence of decamping from one political party to the other by party members. Nomination and substitution of candidates in electoral issues have now taken the fore front of our justice administration in pre-election matters.

One of the sources of electoral disputes in Nigeria is the nomination of the party's candidates for election to the public offices. The choice of candidate by political parties has become subject of high profile litigation in pre-election disputes before the courts. For instance, in the 2011 elections, more than 200 injunctions were served on INEC resulting from intra party agitations over appropriate candidates to represent party in electoral contest.

The internal and external rules are being flouted in the conduct of primary elections, congresses and conventions. Often informal arrangements become the substantive rules of the process. Aspirants duly nominated are being substituted despite meeting all the criteria, and despite the provision of Section 33 of the Electoral Act 2010(As Amended) which states "A political party shall not be allowed to change or substitute its Candidate whose name has been submitted pursuant to section 32 of this Act, except in the case of death or withdrawal by the candidate."

However, where an aspirant is aggrieved for illegal substitution or nomination, political party issues are treated as the business of political parties to handle, they are seen as the domestic affair of the party which the courts do not handle. Issues of nomination and substitution of candidates within a political party are regarded as **'POLITICAL QUESTION'**. The jurisdiction of Courts to entertain pre-election disputes has been a continuous issue in the courts despite the Supreme Court decisions in some cases that they should be entertained.

This contention dates back to the 1982 Electoral Act and the principle laid in *Onouha v Okafor*¹², that courts have no jurisdiction to entertain political party disputes on nomination and substitution of candidates. From the decision in this case, pre-election matters always raise questions as to whether they are justiciable in the courts or not, or whether they are issues (intraparty issues) which are strictly the concern of

¹² (1983) SCNLR 244

the parties to resolve. Our Electoral Acts have been amended at various times over the year, which gives aggrieved aspirants rights to seek redress in law courts. The electoral Acts have been amended to remedy the situation of nomination and substitution of candidates. Sections 23 of the Electoral Act 2002, and section 34 of the Electoral Act 2006 posed challenges in pre-election disputes.

The subsequent amendment in section 33 of the Electoral Act 2010(As Amended) as mentioned makes substitution of candidates within the ambit of the Law.

Parties no longer have the right to substitute names of candidate once submitted to INEC. But this section of the Act has seemingly remained unsettled. The problem is, candidates that have won primaries have their names substituted before submission of names at INEC, and names are also substituted with that of those who never took part in the primaries at all. The Electoral Act however, only makes provision for substitution of names already submitted to INEC and not before the submission of names to INEC.

1.2 STATEMENT OF THE PROBLEM

Party primaries as an aspect of internal party democracy have become as turbulent and as problematic as the general elections that succeed them. Nomination of candidates and substitution is the main crux of intra-party disputes. Though, the 1999 Nigerian Constitution(As Amended) ,the Electoral Act 2010 (As Amended), and the various Constitutions of these political parties stipulate democratic mechanisms of elections for choosing party leaders and candidates for elective offices, these statutory provisions have become mere legal frameworks respected more in their breach than actualization. Most political parties in Nigeria tend to conduct their various primary election without recourse to these laws regulating the nomination and substitution of candidates and this has resulted to the problem of intra-party

conflict whereby members of the political party find it difficult to agree and nominate a particular candidate that will contest for the general election.

Political parties have waived the written democratic procedures for candidate and leadership selection in preference for imposition and manipulated primaries that cause plethora of problems ranging from intra party fractionalization, defections, legal tussles, and violent measures that threaten democratic stability and consolidation in Nigeria. This has led to situations where a party presents more than one candidate for an elective position because each is armed with a court judgment declaring him or her as the legitimate candidate of or for their party. With the attendant consequence that voters are not only confused but cheated out of an electoral contest in which they vote for a particular party candidate while another is declared the winner, either by the courts or by the national executive committee of the party.

The problem is with the exact position of pre-election disputes before our courts especially as it relates to nomination and substitution of candidates. The question of its justiciability is always raised as to whether or not it can be heard. The judicial attitude of our courts and interpretation of the relevant laws makes a concluding position difficult.

1.3 RESEARCH QUESTIONS

In view of the problems of justifiability of pre-election disputes on nomination of candidates by political parties, the following questions which the research seeks to answer are raised:

1. What are the attitudes of the courts in Nigeria towards the internal affairs of the political parties particularly with respect to the choice of candidates in primary elections?
2. Whether by the provision of section 87(9) of the Electoral Act 2010(As Amended), and the decisions of courts, pre-election disputes are justiciable.

1.4 AIM AND OBJECTIVES OF THE RESEARCH

Interference of the courts into the affairs of political parties and political questions promotes party discipline, democratic principles and reduces injustices across party politics. There should be transparency in party administration and the imposition of candidates into any elective position should be abolished, among other ways forward. The aims and objectives of this research work are to therefore;

1. Ascertain the extent of compliance by political parties to their constitution and electoral act in nomination process.
2. To ascertain the justiciability of pre-election disputes.
3. To determine the attitude of courts, through a critical assessment on the decisions of court son pre-election disputes.

1.5 JUSTIFICATION OF THE RESEARCH

An analysis of the relevant electoral provisions, Constitution and cases will contribute to finding solutions in pre-election issues which will make democracy more meaningful. This research will go a long way in bringing out the issues in intra party disputes and the injustice meted on candidates; and the attitude of courts in pre-election disputes. This should provide future terms of reference. The research work will also assist judges in adjudication, and lawyers in finding guiding principles.

1.6 SCOPE OF THE RESEARCH

This work is restricted to Pre-Election matters. The examination and analysis to those sections of the 1999 Constitution (As Amended) dealing with the conduct of party primaries, the Electoral Acts, and notable decisions of the courts on pre-election disputes. The analysis of court decisions is with a view to looking at the attitude of courts in intra-party disputes on nomination of candidates using notable cases, examining the relevant provision of the 1999 Constitution, relevant provision of the Electoral Acts, 1982, 2002, 2006and 2010 (As Amended) on nomination and

substitution of candidates, and assessment of notable decisions of the Federal High Court, Court of Appeal and the Supreme Court. This research work is limited to pre-election disputes on nomination and substitution of candidates as opposed to substitution in the case of death of a candidate as in the case of late prince Abubakar Audu of Kogi State Election in November 2015.

1.7 RESEARCH METHODOLOGY

The methodology adopted for this research is doctrinal. The research analyses both primary and secondary authorities, such as the 1999 constitution (As Amended), the 2002, 2006 and 2010 Electoral Act (As Amended), legal textbooks, judgment and statutes. Journals, newspapers, internet sources, in the area are reviewed and analyzed. The analysis of the authorities is for the purpose of determining the attitude of courts particularly on pre-election disputes.

1.8 LITERATURE REVIEW

The following authorities were reviewed in the cause of this research.

Eje, M., *The Nigerian Constitutional Law*¹³, the book analyses more on constitutional concepts such as the rule of law, separation of powers various constitutions. While writing on political parties, the book is silent on the key points of intra party disputes or matters. It is also not explicit on the problems encountered by party members. The book is merely detailed on the general principles and aspects of constitutional law in Nigeria.

Joshua E.O., *Practical guide to election*¹⁴ the book is a well detailed text and indeed a guide on not only election petition, but pre-election matters as well. The writer has done a good work to guide readers on election practice and procedure. The book is well detailed on court processes in elections, the jurisdiction of courts, nomination,

¹³ (1983) SCNLR 244

¹⁴ Joshua, E.O., *Practical Guide to Election Petition*, Josim Publishing House, 2011.

requirement of a valid nomination, the attitude of courts over party nomination of its candidates, justifiability of pre-election disputes before the courts. The book is elaborate on when reliefs can or may not be sought in the courts. The author relies on appropriate cases and decisions of courts as a guide to issues discussed. The author gives a direct guide on the general principles of Electoral Law. In terms of scope, unlike other texts, it has done justice to both pre-election disputes and election petitions. It is indeed detailed and critical on intra party disputes.

Nwamara, T.A., *Encyclopedia of Election Law and Practice*,¹⁵ The book gives reference points on Elections and Electoral Laws with the aid of decided cases. It gives hint on preparation for Election, political parties and its formation, registration and procedure for conduct of Elections. It covers a wide range of cases and has touched all the Electoral Laws. No piece of Legislation went unnoticed or untouched.

Akeredolu, A., *Election Practice and Law in Nigeria*,¹⁶ The book being a collection of essays selected an interesting paper by Rickey Tarfa (SAN) who wrote extensively on judicial activism and its impact through pronouncements of the judges, and looks at the need for judges to imbibe it. The presenter did justice to the paper by explaining what led to judicial activism and the consequences of judges sticking to the old way of doing things.

Aderemi O.T., *Electoral Law and Practice in Nigeria*¹⁷ The author discourses Electoral law in Nigeria in the light of past and present Electoral statutes. The first chapter of the book introduces the legal and institutional framework for elections, considers the function of state INEC, the limits of the powers of INEC to make bye-laws or Subsidiary Legislations. The chapter also deals with important pre-election

¹⁵ Nwamara T.A., *Encyclopedia of Election Law and Practice* , First edition, Law and Educational publishers Ltd. Abuja,2007.

¹⁶ Akeredolu, A., (ed) *Election Practice & Procedure in Nigeria: A Practitioners Guide*, in Honour of Hon. Justice OlufimilolaO. Adekeye, St.Paul's publishing House ,Ibadan,2012.

¹⁷ Aderemi O.T., *Electoral Law And Practice In Nigeria*, Aderemi Olatubora& co, Akure,2006.

matters and several other Election matters. Chapter three of the book deals comprehensively on non-qualification of a successful candidate, invalidity of election as a result of corrupt practices or noncompliance with provision of the Electoral Act, unlawful exclusion of the petitioner. However, the author did not inform readers about the methods or ways of resolving election disputes by Courts or Tribunals.

Ujo A.A., *Understanding Elections A guide for Students and Election Managers*¹⁸The writer dwelt on the concept of Election, types of Election, Electoral system, historical perspective of electoral process in Nigeria, but did not touch grey areas that impeded the quest to conduct free and fair and credible elections in Nigeria. The author did not contribute on the discourse for truly independent election managers to oversee the affairs of Electoral commission. Neither are there solutions, nor strategies on how to conduct free and fair Elections devoid of violence. In fact the author acknowledges his limitation when he said this book is expected to serve as a modest beginning of this new orientation.

Umaru A., *Rigging Ways, The Constitution and Electoral Process*¹⁹The author observed that rigging Election is the worst form of violence. He stated that it endangers the security of the State, the stability of the economy and provokes life threatening violence. The author stated that most rigging is done by the political party at the Federal level, rigging is for the ruling party is possible because it is in control of the process of legislating the law of the Election and the Electoral officials. The problem with the book is that the arguments are not backed with proof and empirical data. The author's work did not state the causes of Election rigging in Nigeria and did not proffer solution.

¹⁸ Ujo A.A., *Understanding Elections .A guide for Students and Election Managers* ,Anyootu Enterprises and Publishers Nig. Ltd, Kaduna, 2010.

¹⁹ UmaruA.,*Rigging Ways, The Constitution and Electoral Process*, Axis Research Agency ltd, Kaduna, 2003.

Ladan M.T., Election Violence in Nigeria²⁰ the author's work examines election violence in Nigeria. By empirical data, the author analyses the causes of Election violence in Nigeria. Afe B., Election Law and Practice²¹ the book is a practice book on Elections in Nigeria. The author used a lot of decision of courts to serve as a guide for students and practicing lawyers.

The book is in two volumes, the first volume deals with Substantive Law, while the second volume is basically cases on Election matters. Even though the book is in two volumes, the author didn't dwell much on pre-election matters. The focus of the book is more on Election petitions despite the bulky contents of the book. However, the author wrote extensively on the historical development of Elections in Nigeria from colonial to post-colonial era.

Onamade P.A., Advocacy in Election Petitions²² the author discussed much on pre-election matters and substitution of candidates. He discussed the firm decision of some judges. He said "...the judiciary rose to the task and took equally firm decisions that the situation demanded".

The author did not however give solutions to pre-election disputes but only stopped at discussing the issues.

Nwankama B., and NgoziO., Laws Governing Elections and Petitions in Nigeria²³

The author did a good work to understanding the whole laws , and concept of Elections in Nigeria. The book is explicit giving a wide range of understanding for a researcher on the concepts of democracy, political parties and their roles. The author

²⁰ Ladan M.T.,(et al), Election Violence in Nigeria, A publication of Afstrag –Nigeria Supported by the Ford Foundation, Lagos 2005.

²¹ Afe B., Election Law and Practice, Intec printers, Ibadan, second edition 2007.

²² Onamade P.A., Advocacy in Election Petitions, , Philade Co.Ltd. Lagos, 2007.

²³ Nwankama B., and NgoziO., Laws Governing Elections and Petitions in Nigeria, Edu-Edy publications, Owerri, 2007

dealt extensively on issues of qualification of candidates and its challenges. In the cause of the research work and the literatures consulted, no author has touched extensively on intra-party disputes and issues of its justifiability. The book discussed the judicial approach to intra-party disputes, what the critiques of political question doctrine and non-justifiability of pre-election disputes think of it, and analyzed the criticisms. The author gave his detailed perception on judicial approach to non-justifiability of pre-election matters and sees a need for Supreme Court intervention.

Udom U.O., *Nigeria's Electoral Laws Issues and Matters Arising*²⁴, The author did an indepth analyses of decided cases especially those bothering on intra party disputes. The author gave analyses of some relevant cases, making his inputs and proffering advices on a need for a change of decision of the court where necessary.

The book is rich for a researcher who wants to understand the basis for the decisions of the Courts in celebrated pre-election matters or cases. The book is indeed handy and a real reference point for matters arising in pre-election disputes in Nigeria. In spite of the enormous interest the subject generates, it remains the least addressed by scholars and writers. We have a few literatures in the area. Most of these authorities referred are either not extensive or directly on the area, this creates a gap which this research work seeks to bridge.

This research will therefore be an addition to existing works in the area, and serve as a reference point to student, legal practitioners and researchers

1.9 ORGANIZATIONAL LAYOUT

Chapter one of this dissertation is introductory. The chapter contains the background of the study, which is the general introduction of the study, statement of the problem, followed by the research questions, then the objective of the study, justification of the

²⁴ Udom U.O., *Nigeria's Electoral Laws Issues and Matters Arising*, First Edition, Princeton & Associates Publishing Co. Ltd, Lagos, 2014.

research, the methodology adopted in the conduct of the research, and a review of some relevant literatures.

Chapter two is on the legal framework for pre-elections in Nigeria. This chapter looks at the relevant provisions of the 1999 constitution (as amended), the Electoral Act 2010(As Amended), the Independent National Electoral Commission, Political Party Constitutions, and the Rules of court/ Practice Direction.

Chapter three looks at the procedure for nomination in political parties, as provided in the electoral Act and INEC. This chapter dwells on how aspirants are nominated through primary elections. The procedure stipulated by the Electoral Act 2010(As Amended) , the guidelines of INEC, and the guideline for nomination as spelt out by political parties.

Chapter four which is the main theme of this research work is on the attitude of courts on nomination of candidates. The chapter is also on a critical analysis of the attitude of courts on intra party disputes. This chapter is on an in depth analysis of decided cases on nomination and substitution of candidates, viz a viz the different pronouncement of the courts on pre- election disputes.

Chapter five is the concluding chapter which contains the summary of the work, observations and findings of the dissertation, and recommendations.

CHAPTER TWO

THE INSTITUTIONAL AND LEGAL FRAMEWORK FOR PRE-ELECTIONS IN NIGERIA

2.1 INTRODUCTION

Elections are no doubt a critical part of the democratic process. An essential feature in a democratic system of government is that it should be free and fair, participatory, representative, accountable, transparent, responsible. In this regard, voting in a free election is one of the means provided in the constitution to ensure “the participation of the people in their government”. Free and fair election in a liberal democracy entails equality of votes, freedom of individual to nominate candidate or stand as one, periodic revision of registered laws, independent judiciary, frequent elections, freedom of campaign, freedom to nominate candidate or stand as one, periodic revision of electoral Acts. Without these principles, the process and success of a democratic system is likely to be endangered. Democracy allows representation of all people in government, a government that allows the people to choose their leaders by way of election, or to reject such leaders when they are no longer serving their interest. Democracy is ripe when people take part in the decision making process to govern them. Governance is a major issue in development of any nation. The only way for leaders to emerge is through periodic elections which are governed by the constitution and electoral Acts. It is now acknowledged that the distinguishing factors between democracy and other forms of governance is periodic election.²⁵ The electoral process provides the ladder through which citizens acquire political power in

²⁵ Umaru A., Rigging Ways, The Constitution and Electoral Process, Axis Research Agency ltd, Kaduna, 2003.p.3

any democratic setting. It is the pillar on which democracy stands is the electoral process²⁶.

Elections are the defining moment in democracy. The principle of the rule of law is like other attributes of liberal democracies such as accountability, transparency human rights promotion and protection which are essential elements of democracy. Electoral dispute is not peculiar to Nigeria. Disputes that arise from elections have great negative impact on democracy In anticipation of such disputes , the appropriate legal framework was put in place so that aggrieved aspirants or candidates can get justice expeditiously.²⁷

The manner in which it is done depends on the legal framework and internal party rules. Elections in Nigeria is primarily governed by the 1999 Constitution, the Electoral Act 2010(As Amended), the Independent National Electoral Commission(INEC) and the Constitution of Individual Political parties. This chapter examines how these laws and institutions provide the framework for pre-election process in Nigeria.

2.2 THE 1999 CONSTITUTION (AS AMENDED)

The 1999 Constitution (As Amended) is the ground num upon which all other Laws, regulations and rules regulating Elections derive their legitimacy. It defines the institutional framework for Elections in Nigeria. It gave birth to the Electoral Act which regulates the conduct of Elections and Political parties. It sets out the basic framework in relation to time and in relation to process. In relation to time, it defines the tenure and time limit for each of the political structure, the Legislature and the

²⁶ Nwankama B., and NgoziO., Laws Governing Elections and Petitions in Nigeria, Edu-Edy publications,Owerri,2007.p. 235

²⁷ ibid

Executive.²⁸ Each tenure has a phase. Before the expiration of tenure, there has to be an election. The Constitution also sets criteria for election processes. These processes are given further elaboration under the Electoral Act. It is under the Electoral Act that a detailed procedure is provided for. Under the procedural framework, the 1999 Constitution (As Amended) provides that at the expiration of tenure, fresh elections shall be conducted.

It also provides that there should be an election petition tribunal to always determine matters of Election disputes, jurisdiction of Courts, hierarchy of Courts, and judicial powers.²⁹

Section 1 of the 1999 Constitution of Federal Republic of Nigeria (As Amended) provides that the Constitution is Supreme and its provisions shall have binding force on all authorities and person throughout the Federal Republic of Nigeria. While 1(3) provides that if any other Law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other Law shall, to the extent of the inconsistency be void.

The role of the Constitution as the legal frame work for elections within which policies and laws are made is enormous. It is the document that is often said to be the reference point especially in a presidential democracy as is being practiced in Nigeria. The Constitution left the modalities for the actual election to the offices to be provided by the Electoral Laws.

In Nigerian Constitutional history, provisions relating to the requirements as to the qualification of candidates have always been part of Constitution.

²⁸ Section 180 1999 Constitution (As Amended)

²⁹ *ibid*, section 6(6)(a) and (b)

The Constitution makes provision for various offices including the offices of President, Governors, Senate, House of Representatives, assembly, local Government council, age requirement, citizenship, educational attainment, qualification.

The 1999 constitution makes very elaborate provisions for political parties. It defines a political party as; “Any association whose activities include canvassing for votes in support of a candidate for election to the office president, vice president, Governor, Deputy Governor or membership of a legislative house or of local government council”³⁰

It makes provision for the existence of political parties and distinguishes it from an association. No room for independent candidacy in Nigeria. Section 221 provides that no association other than a political party, shall canvass for votes for any candidate at any election or contribute to. The funds of any political party or to the election expenses of any candidate at an election.’ S. 31 (1) of the Electoral Act 2010(As Amended) states that, political party shall not later than 60days before the date appointed for a general election under the provisions of this Act submit to the Commission the prescribed forms the list of the candidates the party proposes to sponsor at the elections.

These provision removes the possibility of independent candidacy in our elections and places the responsibility of elections on political parties. The method of contesting for elective offices is therefore between parties and not a single individuals, it is only a party that canvasses for votes and also sponsors candidates at an election. It thus means that independent candidates are not recognized and cannot run for election in Nigeria.

³⁰ *ibid*, section 222

The constitution provides that political parties must provide a registered office address, with names of its members and address to INEC. Paragraph 15(b) of the third schedule provides for registration of political parties by INEC.

By the provision of sections 80 and 81 of the Electoral Act 2010(As Amended), a political party is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. Thus, even though a political party is an association of its members, the effect of its registration is that the members upon registration as a political party lose their individuality and become an aggregate and a corporate sole. Therefore, when a member of a political party is acting or contesting election on the platform of a political party, he is not doing so as his personal right, but on the aggregate right of the registered membership of the party and merely as the representative or agent of the political party which alone has the exclusive constitutional right and capacity to contest election through its members who are qualified to be so nominated.

Every political party must also have a constitution guiding it. A political party is expected to have constitution which should be registered with INEC. The law provides that the name of a political party should not contain any symbol or logo containing only ethnic or religious connotation or give the appearance that the activities of the association are confined to a party only on the geographical area of Nigeria.

By section 222 of the 1999 Constitution(as amended) and section 44(1), 82 and 83 of the Electoral Act 2010(As Amended), it is only name, initials or acronym and symbol of a political party that appears on the ballot paper for an election. The name, initials, acronym or symbol of a candidate do not appear.

Section 83 of the Electoral Act 2010(As Amended) provides: “ Where a symbol is registered by a political party in accordance with this Act, the Commission

shall allot the symbol to any candidate sponsored by the political party at any election.” Section 223(1) (a) and (b) of the 1999 Constitution states that the Constitution and rules of a political party shall provide periodical election on democratic basis of principal officers and members of the executive committee or other governing body of the political party reflecting the federal character of Nigeria. Section 222 provides that no association by whatever name called shall function as a party, unless -

(a) The names and addresses of its national officers are registered with the Independent National Electoral Commission;

(b) The membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping;

(c) A copy of its constitution is registered in the principal office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National Electoral Commission; The constitution provides that the constitution and rules of a political party shall:

a) Provide for the periodical election on a democratic basis of the principal officers and members of the executive committee or other governing body of the political party reflects the federal character of Nigeria.

b) The election of the officers or members of the executive committee of a political party shall be deemed to be periodical only if it is made at regular intervals not exceeding four years

c) The members of the executive committee or other governing body of the political party shall be deemed to reflect the federal character of Nigeria³¹

The Constitution is explicit on the conditions for political parties to be eligible. Political parties cannot be registered unless it satisfies the conditions set out in section

³¹ section 223(1) 1999 Constitution(As Amended)

222. The constitution governs the activities of political parties³², to guard against illegal or unscrupulous activities. For the purpose of nomination of persons for election to the various offices, the constitution provides for a system of control recognizing only registered political parties as agents for nomination of individuals to contest in the elections³³. A person shall not be qualified unless he is a member of a political party and is sponsored by that political party. To be eligible to contest an election, a candidate must be a member of a political party³⁴.

Political parties are vested with exclusive function of canvassing for votes for candidates at election and of contributing to the campaign funds of candidates at election. Political parties must not have objectives outside the provisions of the Constitution.

The aim of every political party should be in line with democratic principles. “The programme as well as the aims and objects of a political party shall conform with the provisions of chapter II of this constitution”³⁵

Therefore to ensure observance, section 228 provides for the powers of the National Assembly to guide existing political parties.³⁶ This means that the National Assembly can confer its powers on INEC to ensure observance of the provisions of the Constitution by political parties.³⁷ Section 228 provides;

The National assembly may by law provide:

³² Ibid, section 229

³³ Shehu A.T., Strengthening Judicial Intervention in Electoral Disputes in Nigeria: African Journal of social sciences, Vol. 2, 74-88, 2012.

³⁴ Section 31(1) Electoral Act 2010(As Amended)

³⁵ Section 224, Chapter 11 of the 1999 Constitution(As Amended) is detailed on political, economic, social, educational, foreign policy, and the environmental objective of government.

³⁶ Nwankama B., and Ngozi O., Laws Governing Elections and Petitions in Nigeria, Edu-Edy publications, Owerri, 2007. p.38

³⁷ Part 111, Chapter 6 1999 Constitution (As Amended)

(a) Guidelines and rules to ensure internal democracy within political parties, including making laws for the conducts of party primaries, party congresses and party convention and (b) The conferment on the Independent National Electoral Commission of power as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the commission more effectively to ensure that political parties observe the practices of internal democracy including the fair and transparent conduct of party primaries, party congresses and party convention. Qualification of candidates to contest Election into any office is a constitutional requirement. The 1999 Constitution provides for requirements for election into all elective offices. This is to guard against having aspirants or candidates with questionable character or without the basic educational requirement. Once a candidate is found not to have been legally and lawfully qualified to have contested an already conducted election, the effect

is that the candidate did not contest the said election. Elective offices provided for under the Constitution are the office of the President, vice president, the governors, and deputy governor of a state, the members of the senate's, the House of Representatives and the Houses of Assembly respectively. It provides for a four year term for each. Qualification and nomination of candidates are separate requirements. To be nominated, an aspirant must have the basic requirement. The person nominated has not occupied the office yet, but he must be qualified before he can contest. Section 130 provides for the qualification of the person aspiring to be the president of Nigeria. By Section 131 of the 1999 Constitution, a person shall be qualified if;

- (b) He has attained the age of forty years;
- (c) He is a member of a political party and is sponsored by that political party; and
- (d) he has been educated up to at least School Certificate level or its equivalent.

Where qualification of a candidate is in dispute, the burden to prove non qualification lies on the person making the accusations and not the accused. The Constitution also

provides for disqualification of candidates. No person shall be elected if he is certified to be a lunatic or of unsound mind, under a death sentence, or imprisonment, an undischarged bankrupt, if still employed in a civil service³⁸, indicted for embezzlement of funds³⁹, a member of a secret society, or presented a forged certificate to INEC. It is clear that naturalization or citizenship by registration does not give a person the right to contest in Nigeria. Only citizenship by birth is recognized. For tenure of the office of president, only two terms is recognized by the constitution. Such term should be where an election was held and the president was sworn twice. Where a vice president takes over the remaining years of the president for reason of death or any incapacity, the remaining years would not be counted as part of his term of office for any re-election⁴⁰. Chapter VIII, Part VI of the, and Section 318 (1) of the 1999 Constitution gives a lucid interpretation to what the constitution meant by “School Certificate or its equivalent” thus:

“School Certificate or its equivalent” means-

- (a) A Secondary School Certificate or its equivalent, or Grade II Teacher’s Certificate, the City and Guilds Certificate; or
- (b) Education up to Secondary School Certificate level; or
- (c) Primary Six School Leaving Certificate or its equivalent and -
 - (i) Service in the public or private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years, and

³⁸ Resignation of a public officer must be at least 30 days before the date of the election.

³⁹ Constitutionally, an indictment is a ground for disqualification from contesting governorship election.

⁴⁰ section 137 1999 Constitution (As Amended)

- (ii) Attendance at courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totaling up to a minimum of one year, and
 - (iii) The ability to read, write, understand and communicate in the English Language to the satisfaction of the Independent National Electoral Commission; and
- d) Any other qualification acceptable by the Independent National Electoral Commission.”

In essence, constitutionally, a presidential contestant is eligible even if the only educational qualification he/she possesses is a mere “Primary Six School Leaving Certificate” or “the ability to read, write, understand and communicate in English Language” or “service in the public or private sector in the Federation in any capacity acceptable to INEC for a minimum of ten years” or “attendance at courses and training in such institutions as may be acceptable to the INEC for periods totaling up to a minimum of one year.”

In *Haske v Mogaji*⁴¹ where the court held, the question of onus to prove qualification that;

It is both legal and logical that the mere fact that a party has pleaded in his petition that the other party is not qualified to contest an election, because he lacked the requisite educational qualification is not sufficient for the tribunal to decide on it, in the absence of cogent and credible evidence of such non-qualification or disqualification being placed before the tribunal. In the absence of evidence, such a plea in the petition ends and/or terminates with the petition.

⁴¹ (2008) 3 LREC N p. 127 at 130

From the wordings of the Court, it is clear that it is the person alleging non-qualification of the candidate that has the responsibility of showing by cogent and convincing evidence that such aspirant never attended any such secondary school as alleged.

The Constitution does not recognize single nomination. Party members are to be given right to either contest or be nominated. By section 132 (3), where in an election to the office of President one of the two or more candidates nominated for the election is the only candidate after the close of nomination, by reason of the disqualification, withdrawal, incapacitation, disappearance or death of the other candidates, the Independent National Electoral Commission shall extend the time for nomination.

However, by the provision of section 133 a candidate shall be deemed to be elected if ;

- (a) He has a majority of YES votes over NO votes cast at the election; and
- (b) He has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja

However, section 141 provides for the office of the vice president. A vice president becomes the president where the president becomes permanently incapacitated, resigns, is being impeached, For qualification to the national assembly and Senate ,sections 65(1) and 66 of the 1999 Constitution (As Amended) provides for the basic requirements which is the same with that of the President and Vice President, except for age ,where requirement for senate is 35 years and 30 years for House of representatives.

The reason for disqualification is the same with that of the president and vice president. It is sufficient that a candidate attended school even without passing and obtaining a certificate.⁴²

⁴² section 176(1) and section 182(1) 1999 Constitution(As Amended)

The qualification and disqualification for Governor is also the same with that of president except the requirement of age which is 35 years.⁴³ The deputy Governor of state must also have the basic requirements.⁴⁴ Where the Governor cannot perform his functions for reason of incapacitation, death, resignation, impeachment, or removal from office, the deputy Governor acts as the Governor of the State.

Where the Governor of a State intends to go on vacation, or is incapacitated, he must write to the speaker of the National Assembly stating such. To be a member of the House of Assembly of a state, a candidate must also be a citizen of Nigeria, up to 30 years, a member of a political party and is sponsored by that political party. He must also be educated up to at least School Certificate level or its equivalent.⁴⁵ Disqualification of candidate as a member of House of Assembly⁴⁶ is also as provided for president, vice president, Governor and their deputy.

Under Section 140 (3) of the Electoral Act, 2010 (As Amended), before the court or election tribunal can declare a candidate with the highest number of valid votes cast in an election as duly elected, such candidate must satisfy the requirements of the Constitution and the Electoral Act.

The Constitution provides for Election disputes. It provides for pre and post-election disputes which are to be handled by ordinary courts and election petition tribunals where there are disputes on the conduct, validity of elections of the national assembly, governorship or presidential elections⁴⁷.

⁴³ Nwamara T.A., Encyclopedia of Election Law and Practice, First edition, Law and Educational publishers ltd. Abuja, 2007.p.343

⁴⁴ section 186, 1999 Constitution(As Amended)

⁴⁵ Ibid, section 90 and section 106

⁴⁶ Ibid, section 107(1)

⁴⁷ Ibid, section 285

An election petition could be defined as a formal complaint of a candidate or his political party (who has lost in an election) against the undue return of another candidate who has been returned as the winner but which the Petitioner is challenging before an Election Tribunal. Thus, what constitutes an election petition is a complaint by the petitioner against an undue return⁴⁸. An election petition tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition, while an Appeal shall be heard and disposed of within 60 days from the date of the judgment appealed against⁴⁹, *Shettima v Goni*⁵⁰, *Abubakar v Nasamu*⁵¹.

Election petitions are regarded as *sui generis* i.e peculiar in nature. The procedural rules applicable thereto are distinctly provided or set out in the Electoral Act, Election Tribunal and court practice Direction pursuant to the 1999 Constitution (as amended), Section 285 provides that there shall be established for the Federation one or more election tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any other tribunal, have original jurisdiction to hear and determine petitions as to whether –

- (a) Any person has been validly elected as a member of the National Assembly;
- (b) The term of office of any person under this Constitution has ceased;
- (c) The seat of a member of the Senate or a member of the House of Representatives has vacant; and
- (d) A question or petition brought before the election tribunal has been properly or improperly brought.

⁴⁸ Ibid, section 285(5)

⁴⁹ Ibid, section 285(6) and (7)

⁵⁰ (2011) 18 NWLR (pt.1279) 413

⁵¹ (2012) 17 NWLR (pt. 1330) 407

By virtue of Section 246(3) of the Constitution, the Court of Appeal is the final Court in election petitions arising from Governorship/National assembly and Legislative Houses Elections. By sec 287(2) its decisions are final and binding by all courts or tribunals including the court of Appeal.

The door of litigation is open in post-election disputes to candidates who are not satisfied with election results.

Thus, an intra-party dispute cannot form the fulcrum of Election petition. High Court or the Federal High Court has jurisdiction in respect of pre-election matters. *Odedo v INEC*⁵² the court held that reliefs predicated on pre-election matters are clearly outside the jurisdiction of election Tribunals. Similarly in *Ozigbo v. P.D.P*⁵³, the Court in relying on section 285 (1) (a) of the 1999 Constitution held that election tribunals cannot accommodate pre-election matters.

On nomination, sponsorship, and substitution of candidates and whether the Election tribunal has jurisdiction, the court in *Saulawa v Kabir*⁵⁴ held; issues on nomination, sponsorship and substitution of candidate are pre-election matters which by their nature cannot be ventilated before an election petition tribunal as the tribunals are not set up for that purpose.

It was held in *Ezeobi v Nzeka*⁵⁵ that an Election petition is meant to question the election of a candidate returned as the winner. It must also be shown that the purported election and return was void, one of which could be that the winner was not returned by a majority of lawful votes.

⁵² (2008) LRCN Vol.162(pt. 11)

⁵³ (2010) 9 NWLR (pt.1200)601 at 652, paras. C-E

⁵⁴ (2011) 2 NWLR (pt.1232) 417 at 446, para. D

⁵⁵ (1989) 1 NWLR (pt. 98) 478

In *Egolum v Obasanjo*⁵⁶ it was held that apart from the petitioner or his solicitor, no other person no matter how aggrieved is entitled to present an election petition. Unlike other civil proceedings, the parties to an election petition and the grounds of the petition itself are statutorily defined. The parties to an election petition under the present dispensation are either both of the candidate or candidates who lost election and/or their political parties. The Respondents to the petition are the returned candidates, the Independent National Electoral Commission (INEC) and/or any of its Resident Electoral Officers. There are only four grounds under which an election can be questioned, that is, the non-qualification of the returned candidate, the invalidity of the election by reason of corrupt practices or non-compliance with the provisions of the Act, that the Respondent was not duly elected by the majority of lawful votes or that the Petitioner or its candidate was validly nominated but was unlawfully excluded⁵⁷. Errors that are overlooked in other civil proceedings are not just frowned at in election petition proceedings, but totally prohibited. No court of law has the power or jurisdiction to change or modify the procedure stipulated by the Electoral Act for presenting and prosecuting election petitions in order to indulge any Petitioner who breaches the law.

A Petitioner who complains that an election be annulled by reason of corrupt practices or non-compliance with the provisions of the Act and/or that the Respondent was not duly elected by the majority of lawful votes cast, cannot within the same election petition complain that he was unlawfully excluded.

By section 145 (1) of the Electoral Act 2010 (as amended), “The rules of procedure to be adopted for Election petition and Rules or procedure for appeal arising there from shall be asset out the first schedule to this Act”.

⁵⁶ (1999) 7 NWLR (pt. 611) 355

⁵⁷ Sections 137 and 138 of Electoral Act, 2010 (As Amended)

Civil procedure of Election petition means the civil procedure of the Federal High Court Rules⁵⁸ It is the Constitution that provides for the composition of the Courts and tribunals to adjudicate on election petitions challenging elections into the offices of President, Governor, Senator, House of Representatives and House of Assembly of a State⁵⁹. It is only these courts established by the Constitution that can adjudicate on the petitions arising from elections into the offices concerned. Not only that, the Constitution stipulates that election petition shall be filed within 21 days after the declaration of the results in issue. Unlike other civil proceedings where a court can extend the time within which an action can be filed, no tribunal or court has the power to extend either the time within which to file a petition or within which to take and complete it.

Section 285(6) of the 1999 Constitution is to the effect that “an Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition”.

This should be amended to give sufficient time to a Petitioner by increasing the number of days. In practical terms, if a Petitioner is expected to challenge a Presidential or Governorship Election fairly well, he cannot do so while the Constitution limits him to 180 days.

2.3 THE ELECTORAL ACT 2010(AS AMENDED)

The Electoral Act 2010 repeals the Electoral Act No, 2 of 2006 and the Independent National Electoral Commission Acts, Cap 15, Laws of the Federation of Nigeria, 2004 and enacts the Electoral Act, 2010 to regulate the conduct of Federal, State and Area Council elections. The observations by the Courts with respect to certain provisions of the Constitution and the Electoral Act were the basis for reviews of the

⁵⁸ First Schedule Electoral Act 2010(As Amended)

⁵⁹ Section 239 of the Constitution(As Amended), relating to the office of the President and 285 of the same Constitution relating to the office of Governor and others.

Electoral Laws. The Electoral Act is made pursuant to the Constitution; hence its provisions must not conflict with the constitution being the Supreme Law of the land. A close look at the provisions of the Electoral Act shows that the Act deals with pre-election disputes and vests in the Federal High Court or a State High Court the power to hear and determine such disputes. For example, the question as to whether or not any provisions of the Act or the guidelines of a political party has been complied with in the selection or nomination of a candidate of a political party for election.

The Electoral Act being an enactment of the National assembly is the second regulatory statute book for elections in Nigeria. Where the constitution is silent on a law or provision, the Electoral Act elaborates on it. Part 1 of the Act establishes the Independent National Electoral Commission (INEC)⁶⁰ which spells out the days of election, postponement of election, announcement of election result, oath of officers, notice of election, submission of list of candidates, prohibition of double nomination, withdrawal of candidate, death of candidate, validity of multiple nomination. Part V of the Act regulates political parties which are crucial partners in the electoral process. It provides for power of commission to register political parties, notice of convention, congress, monitoring of political parties, nomination of candidates by parties. Part VI of the Act deals with procedures for elections to Area Councils of the Federal Capital Territory (FCT) .It provides for power of the commission, qualification, and disqualification. Provisions are made in Part VII for Electoral Offences and sanctions. The judiciary is saddled in Part VIII with determination of disputes arising from the conduct of an election. By Section 137 of the Electoral Act, an election petition can only be presented by a candidate in the election or a political party which participated in the election on the grounds stated in Section 138 of the Act. Part 1 of the Act, provides for the Independent National Electoral Commission as a body corporate with

⁶⁰ Section 3(1) Electoral Act 2010(As Amended)

perpetual succession and may sue and be sued in its corporate name.”*Umar v Onokata*⁶¹

In *Buhari v Obasanjo*⁶², the court held that in addition to the functions of the commission as conferred on it by the constitution, the commission shall have power to conduct civic education; promote knowledge and sound democratic election process; and conduct any referendum required to be conducted pursuant to the provision of the 1999 constitution or any other law or Act of the national Assembly.

The procedure for election is captured in Part IV of the Act. Because of the difficulties meted on aspirants, and irregularities by political parties, changes have been made on this part from the Electoral Act 2006. There are changes to sections 32, 42 (3) and (4) and section 77 of the Electoral Act 2010. Section 31 of the Electoral Act 2010 made changes to the Sec 32 of the 2006 Act. This is in respect to time limit within which political parties are allowed to submit their list of candidates supported by affidavits to INEC. Sec 31(4) now allows anyone to apply to INEC on any information needed on a candidate, but subject to payment of a fee, and a candidate must give a traceable address in the state where he intends to contest. This address is where he receives all his correspondences. On substitution of candidates, several changes have been made. Section 23 of 2002 Electoral Act has been amended with section 32 of 2006 Electoral Act, and section 32 has now been amended with section 33 of the Electoral Act 2010. This is the most drastic change made in the Act. Section 33 provides for nomination of candidates which must be strictly followed by political parties. The Electoral Act prohibits double nomination .Nominations are done in writing by persons whose names are written in the register of the political parties. Under the Electoral Act 2002, political parties had the liberty to change a nominee for Election to a particular office. Nobody had the power including INEC and the Courts

⁶¹ (1999)3 NWLR (pt.596)558

⁶² (2005) 13 NWLR (pt. 941)1 at 210

to inquire into whether there were reasons or not for the substitution of any aspirant formally submitted by the party to the INEC.⁶³

Section 23 of the Electoral Act 2002 provides; “Any political party which wishes to change any of its candidates for election under this Act may signify its intention in writing to the commission not later than 30days to the date of the election”.

By this provision, political parties didn’t have to give any reason why it will change or substitute a nominated candidate. This called for amendment since political parties where changing candidates at will. Following the agitations for amendment of the Electoral Act 2002 by some judges and lawyers, the 2002 Electoral Act was amended and the 2006 Electoral Act was enacted.⁶⁴ Although the party is charged with the responsibility of nominating and sponsoring candidates for elections, the Electoral Act provides for the procedural aspect, the provisions which parties must strictly comply with. Where a political party failed to comply with the relevant provisions of the Act in returning a candidate for an election, such candidate shall be disqualified from contesting the election.⁶⁵ Section 32(1) and section 34 of the Electoral Act 2006 was introduced and it came with a modification. It states;

“34(1) a political party intending to change any of its candidates for any election shall inform the commission in writing not later than 60 days to the election,

34(2) any application made pursuant to subsection (1) of this sections shall give cogent and verifiable reasons;

34(3) except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section. By this section, substitution of candidate was no longer allowed except for reasons stated

⁶³ (2005) 13 NWLR (pt. 941)1 at 210

Aduloju and Okobote, Impact of Judicial Activism on Electoral Laws in Nigeria, Pensbury publishers, Abuja,2013,p.158

⁶⁴ *ibid*

⁶⁵ Part V, Electoral Act, 2010(As Amended) for political parties.

in the amended Act. Even after the amendment to this section, political parties still substituted candidates and gave reasons that suit them as cogent and verifiable.

The decisions in *Ugwu v Ararume*⁶⁶, and *Amaechi V INEC*⁶⁷ where the turning point in the decision of courts on nomination and substitution of candidates. The Electoral Act was amended again and section 33 was enacted to read; “A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 32 of this Act, except in the case of death or withdrawal by the candidate”.

Sec. 34 provides that;

- (1) The commission shall, at least 30 days before the day of the election publish by displaying or causing to be displayed at the relevant office or offices of the commission and on the commission’s website, a statement of the full names and address of all candidates standing nominated.*
- (2) any application made pursuant to subsection (1) of this sections shall give cogent and verifiable reasons;*
- (3) except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section.*

These provisions now regulate nomination of candidates and submission of names to INEC by a political party. The differences between sections 32(1) and 34 of the 2006 Act and Section 23 of the 2002 Act is the phrase cogent and verifiable reasons in Section 34 which was not in the 2002 Electoral Act. Where a candidate nominated feels he is no longer interested, he must do so himself in writing and signing the

⁶⁶ (2007) 12 NWLR (pt. 1048) 367

⁶⁷ (2008) 33 NSCQ 332 at 585

notice of withdrawal. This is to guard against impersonation or circumstance where a person's name is fraudulently removed or withdrawn.

Sec. 35 provides; "A candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the political party that nominate him for the election and the political party shall convey such withdrawal to the commission no later than 45 days to the election". The act also makes provision for circumstances of death after nominations. In such situation, INEC shall fix another date for election.

⁶⁸The Act prohibits double nomination,⁶⁹ but political parties in recent times are in the habit of conducting parallel primary elections. *CPC v Lado Danmarke*⁷⁰. The Act also makes provision for where at the close of the nomination process, no candidate emerged, it provides that INEC should fix a new date for primaries.⁷¹ .However, if before the time for the delivery of nomination papers and the withdrawal of candidates for an election under the Act, more than one person remains validly nominated, a poll shall be taken.⁷²

Part V of Act provides for political parties. Sec 78(1) provides that every political party shall comply with the provisions of the commission for it to be registered.⁷³ It is after a political party satisfies the conditions set out in the Constitution that it can function as a party and carry out its manifesto. Conventions, congresses, or primary election are the nomination process in any political party since is the first step of choosing candidates who will represent a political party at general elections. Primary elections can be defined as "internal party processes that choose a political party's

⁶⁸ section 36(1) 1999(As Amended)

⁶⁹ Section 37 Electoral Act 2010(As Amended)

⁷⁰ (2012) ALL FWLR (pt.607) 598

⁷¹ section 38 of the Electoral Act 2010(As Amended)

⁷² Ibid, section 39 to 41

⁷³ Ibid, section 78(1) (2)

candidate(s) for the next general election by holding an internal election”. Primary elections have however received both support and criticisms. Supporters argue that primaries enable parties pick popular candidates likely to win the general election, while those that criticize the process do so based on substitution of candidates which is done because of preferences given on the choice of candidates.

The critiques see the process as undemocratic as only a small fraction of party members do actually vote in primary elections. To its critiques, it weakens party structure by diverting attention from the party policies to individual candidates.

A registered political party shall give the Commission at least 21 days’ notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under the Act. Political parties hardly give notices to INEC. The trend is even where parties notify INEC, they change the date of primary elections as opposed to the date communicated to INEC leading to parallel primaries.*CPC v Lado Danmarke*⁷⁴

INEC also has a duty to monitor political party activities⁷⁵. Sec 86(1) provides that the Commission shall monitor and keep records of the activities of all the registered political parties.

Nomination of candidates is within the powers of political parties. INEC does not have the right to impose or select candidates for Political Parties. Selecting candidates is a crucial task for parties .This selection process relies on two methods, namely, direct ballot open systems of eligible members, called primary election or nomination by some kind of party assembly.

⁷⁴ (2012)All FWLR(pt.607)598

⁷⁵ section 85(1) (2) Electoral Act 2010(As Amended)

There are closed or congress type (conventions or caucus). Only registered members of a political party are allowed to vote. The Electoral Act limits participation to party members⁷⁶.

The 2006 Electoral Act was silent on the manner of selecting candidates for elective positions. This was corrected in the amended Electoral Act 2010⁷⁷. Section 87(1) states that,

“A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions”.

(2) "The procedures for the nomination of candidates by political parties for the various elective posts shall be by direct or indirect primaries".

(3) "A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party".

Sections 87(4) to (11) stipulates the methods of organizing the primaries in the case of parties that choose the indirect form of primaries for all the elective positions, namely, President, Governor, Senate, House of Representative, States Houses of Assembly, Chairmanship and councilors of local government area councils. For instance, indirect primaries for the nomination of a presidential candidate will involve the party holding special conventions in each of the 36 states of the federation and Federal Capital territory, where delegates shall vote for each of the aspirant at designated centers in each state Capital on specified dates. The candidate with the highest number of votes shall be declared in a special convention to be held by the party in each of the 36 states and federal Capital Territory and the name of the nominee forwarded to INEC as the candidate of the party after ratification by the convention. Where a political party adopts the direct primaries procedure, it shall ensure that all aspirants are given equal opportunity of being voted for by members of the party. This is to ensure that

⁷⁶ Ibid, section 85(3)

⁷⁷ Ibid, section 85(4)

the nomination process is democratic⁷⁸. Indirect primaries for the choice of its candidate entails holding of special conventions where delegates votes for aspirants of their choice⁷⁹. A political party must also indicate this in its Constitution.⁸⁰ However, no political appointee shall be a delegate in any political party⁸¹. The candidate with the highest number of votes is declared the winner for all the elective offices. The name of the aspirant with the highest number of votes is forwarded to INEC, but subject to compliance with provisions of the Electoral Act⁸². The Act also makes provision for single aspirant. Ratification of member of the party is needed. The Electoral Act states that where there is only one aspirant in a political party for any of the elective positions, the party shall convene a special convention, or congress at a designated centre on a specified date for the confirmation of such aspirant and the name of the aspirant voted shall be forwarded to the commission as the candidate of the party.⁸³

For instance the party may introduce a quota system for its candidates to be elected. They can decide to allot a percentage of the seats to women, or zone particular offices to particular geographical regions of the state. Some critics criticize the quota system as being undemocratic and blocking the chances of better candidates to win the election.

⁷⁸ Ibid, section 87(4)

⁷⁹ ibid, section 87(1) to (5)

⁸⁰ ibid, section 87(6)

⁸¹ Ibid, section 87(7)

⁸² Ibid, section 87(8) No political appointee shall be a delegate. This was part of the party issues in People's Democratic Party.

⁸³ ibid, section 87(9)

2.4 THE INDEPENDENT ELECTORAL COMMISSION (INEC)

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) established the Independent National Electoral Commission. As noted earlier, it is basically governed by the Constitution and the Electoral Act. The Electoral Commission is a fundamental pillar in the electoral process.

One central function of INEC could be said to be the regulation of political parties. The 1999 Constitution (As Amended) is the principal legal framework from which INEC derives its powers to regulate political parties. Sections 221 through 228 establish both the regulatory powers of INEC and the grounds for regulation. These are then elaborated in the Electoral Act 2010(As Amended), particularly in Part V. These powers of the Commission are further given effect by its powers to make guidelines and regulations under the Electoral Act.

Consequently, the Commission issues guidelines to regulate the activities of political parties, which usually cover areas such as registration of parties, nomination of candidates, campaign finance and role of party agents. Apart from overseeing the conducts of elections in Nigeria, INEC is vested with supervisory power on political parties. It is a juridical person that may sue or be sued in its own name.⁸⁴ It is in charge of putting in office successful candidates after elections. Free and fair elections lie in the hands of the commission because it sets rules and guides rules made by political parties. Most times, INEC is at logger heads with political parties. The conflicts often arise from complying with constitutional provisions, internal processes of political parties, and external affairs, audit, congresses and conventions. The functions of INEC are spelt out in the Constitution Section 153 (1) (f) 1999Constitution (As Amended) provides for the establishment of the Independent

⁸⁴ Ibid, sec 1 and sec 153 1999 Constitution (As Amended)

National Electoral Commission. The powers of the INEC as contained in paragraph F 15 of Part 1 of the third Schedule which are:

- a. Organize, undertake and supervise all election to the offices of the President and Vice- President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation.
- b. Register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly.
- c. Monitor the organization and operation of the political parties, including their finances.
- d. Arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information.
- e. Arrange and conduct the registration of persons qualified to vote, prepare, maintain and revise the register of votes for the purpose of any election under this Constitution.
- f. Monitor political campaigns and provide rules and regulations which shall govern the political parties.
- g. Ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe to the oath of office prescribed by the law;
- h. Delegate any of its powers to any Resident Electoral Commission; and
- i. Carry out such other functions as may be conferred upon it by an Act of the National Assembly

In addition, it is tasked with the function of providing voter and civic education, promoting “knowledge of sound democratic election process,” and conducting referenda as needed.⁸⁵

One of the factors that compromised the credibility of past elections is said to be the lack of structural independence of INEC. This was one of the main issues taken up by the Electoral Reform Committee in 2007. Among the recommendations that the Committee made was the necessity for guaranteeing the independence of INEC, both through the way the Commission is funded and through the appointment process for its members.⁸⁶

However, the chairman of INEC is appointed by the President of the Federation, subject to confirmation by the Senate.⁸⁷ the removal of the chairperson is harder to accomplish. To do so, the President needs the support of a two-thirds majority of the Senate.⁸⁸

INEC has no right to reject or disqualify a candidate duly presented by a Political Party. In *Action Congress of Nigeria & Anor. v INEC*⁸⁹, the issue was whether INEC could disqualify a party’s sponsored candidate from contesting elections without recourse to the courts. The Supreme Court held that INEC could not usurp the role of the courts by becoming the determinants of which candidate was guilty of offences as mere indictment by an administrative panel of enquiry did not detract from the person’s presumption of innocence. For INEC to disqualify candidates on the basis of allegations therefore there ought to be a trial and conviction, as was held in *Amaechi v*

⁸⁵ section 2 Electoral Act 2010(as amended)

⁸⁶ Emily I. Alemika & Etannibi E.O., Democracy, Elections, and the Roles of Citizens, 3 Journal of Public Law and Constitutional Practice 7, 1-16 ,2010.

⁸⁷ Section 154 1999 Constitution (As Amended)

⁸⁸ Ibid, section 157

⁸⁹ [2007] NWLR (Pt. 1048) 26

*INEC*⁹⁰ and *Jenkins Gianeduviegwede v INEC & 3 ORS*⁹¹. INEC has a duty to ensure that all political parties and candidates are afforded equal opportunities to participate in the elections. The results of elections shall be announced at the polling units and the collation centers. The Commission has no power to review the declaration of result made by a Returning Officer. The return is final subject to review only by the Tribunal or Court. INEC also has the role of monitoring Political Party's Organization and Operations. The monitoring role of the Commission is to check unrestricted use of money in politics and in turn avoid a situation where a few rich individuals hijack a party for their own personal interests which can cause intra party disputes and create instability within the political system.

At the expiration of term of offices, INEC is empowered under section 78 of the Constitution to register voters and conduct elections to fill the next legislative session with elected members. The management of political party finances entails the keeping of books and records of financial transactions as enshrined in the Constitution⁹² It is important that all political parties keep accurate records of their financial transactions. In its monitoring responsibility, it is necessary for all political parties to understand its responsibilities and duties to the Commission. In this regard political parties are expected to cooperate with the Commission or its duly authorized agents that may in the course of its duties by law, seek access to their books, accounts and vouchers. The Commission on its own is expected to provide support to all the registered political parties by helping them develop and implement efficient system of records keeping and information management. It is also the responsibility of the commission to set out guidelines for the conduct of primary elections.⁹³ This entails

⁹⁰ (2008) 5 NWLR (Part 1080) 227

⁹¹ SC/255/2013

⁹² Section 225(5) 1999 Constitution (As Amended)

⁹³ Section 30(1) and 31(1) Electoral Act 2010(As Amended)

fixing dates for primary elections for political parties, publication of list of successful candidates nominated. In *Dr. Chris Nwachukwu Ngige v Mr. Peter Obi & 4ors*,⁹⁴ Adekeye JCA held;

The conduct of election in Nigeria by force of law is the primary responsibility of INEC. This responsibility starts with the registration of voter's sequel to the registration of political parties. ... it has the sole responsibility to organize, conduct and supervise all the elections and matters pertaining to elections into all the elective offices provided in the Constitution of the Federal Republic of Nigeria...by its enormous and onerous duties, the Commission, in the eye of the law must be an impartial body...

2.5 POLITICAL PARTY CONSTITUTION

Every political party must have a constitution. The constitution of a political party is meant to control its members, their actions, and their functions. They are bound by the decisions reached by the party. Party constitution must contain provisions dealing with procedure for nomination of candidates, procedure for amendment of its constitution, the party's ideology, periodic election of officers, and disciplinary measures. The constitution of a political party cannot be said to be an enactment. This is because an enactment is a law made by the national assembly. Members of a political party are bound by a contract which imposes the provision of the said party constitution on them. They express their intentions and wishes in their constitution. The courts therefore are not to interpret the provisions of their constitution for them. However, it is a mandatory constitutional provision that every political party must have a Constitution binding it. Apart from the statutory provisions on nomination of candidates for election, the political parties are at liberty to design their own guidelines for the purpose of regulating, in addition to the statutory provisions, the internal arrangement for nomination of candidates.

⁹⁴ (2006) All FWLR (pt. 330) p. 1041 at 1169 - 1170, paras D-G

For emphasis, section 222(c) and (d) and 223 of the 1999 Constitution (As Amended) provides;

- (c) a copy of its constitution is registered in the principal office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National Electoral Commission”
- (d) any alteration in its registered constitution is also registered in the principal office of the Independent National Electoral Commission within thirty days of the making of such alteration

223. (1) The constitution and rules of a political party shall-

- (a) provide for the periodical election on a democratic basis of the principal officers and members of the executive committee or other governing body of the political party; and
- (b) ensure that the members of the executive committee or other governing body of the political party reflect the federal character of Nigeria.

228. The National Assembly may by law provide -

- (a) Guidelines and rules to ensure internal democracy within political parties, including making laws for the conducts of party primaries, party congresses and party convention and
- (b) The conferment on the Independent National Electoral Commission of power as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the commission more effectively to ensure that political parties observe the practices of internal democracy including the fair and transparent conduct of party primaries, party congresses and party convention
- (c) for an annual grant to the Independent National Electoral Commission for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions; and

- (d) for the conferment on the Commission of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the provisions of this part of this chapter.

229. In this part of the chapter, unless the context otherwise requires -

"association" means anybody of persons corporate or unincorporate who agree to act together for any commission purpose, and includes an association formed for any ethnic, social, cultural, occupational religious purpose; and

"political party" includes any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice-President, Governor, Deputy Governor or membership of a legislative house or of a local government council.

The essence of having party Constitution with INEC is to ensure observance of the rules set out by the Political parties for themselves. This is to ensure internal party democracy to avoid oppression or suppression on party members.

A political party can however change its name, make rules against litigation, and take disciplinary measures against its members. Unless it violates its own constitutional provisions, the court will not interfere. A political party has the sole right to determine its candidates for elections subject to the restrictions in the Electoral Act. The candidates must emerge from democratic primary election conducted in accordance with Section 87 of the Electoral Act.

Political party Constitution does not contain qualification of candidate. Qualification is as set out in section 177(c) of the 1999 constitution.

2.6 RULES OF COURT

Where an aspirant is not satisfied with the conduct of the affairs of his political party, or primary election, congress or conventions, or a party fails to hold congress, or a

political party fails to declare the aspirant with the highest number of votes at the end of voting as winner of the primaries of the party, or fails to forward an aspirant's name to the commission as the candidate of the party, an aspirant can seek redress in the court.⁹⁵

Rules of Court as it applies to all other civil proceedings apply to pre-election matters. While the Federal High Court (Civil Procedure) Rules 2009 covers practice and procedure in Election Petitions. These Rules cannot however override any superior laws, *Chime v Ezra*⁹⁶. In *Adebuyi v Mustapha*⁹⁷, the court held that Rules of court must be obeyed. Adherences to rules of court and practice directions are essential in court processes including election cases. In *Omidiran v Etteh*⁹⁸, the Court held that the essence of practice directions is to guide and regulate observance to the Electoral Act and the Court Rules where applicable. Where there is a conflict between the Constitution and practice directions, the former will prevail. *Buhari v INEC*⁹⁹

The Rules of Court form the basis upon which the courts rely in reaching its decisions. Disputes arising from the conduct of primary elections shall be filed before the ordinary courts. Question as to whether or not any provisions of the Act or the guidelines of a political party has been complied with in the selection or nomination of a candidate of a political party for election are heard by these courts which are regular courts. Pre-election matters are normal civil cases and as such do not require any special proceedings. *Hassan v. Aliyu*¹⁰⁰, *Salim V. CPC*¹⁰¹ *Abubakar Mahmud Wambai v Dr. Kizaya Donatus*¹⁰²

⁹⁵ Section 87(10) Electoral Act 2010(As Amended)

⁹⁶ (2009) 2 NWLR (pt.1125) at 263 at 347, paras F-G

⁹⁷ (2011) 2 NWLR 1-183 at 128 lines 25-30

⁹⁸ (2011) 2 NWLR (pt.1232)471 at 501,paras.A-B

⁹⁹ (2008)19 NWLR (pt.11200) 246 at 393 paras. B-D

¹⁰⁰ (2010) 18 NWLR (pt. 1223) 547

Suffice is to say that Election petition is also a civil proceeding with its own set of rules of procedure. Its practice and procedure shall be as nearly as possible similar to the practice and procedure of the High Courts. Provisions are made to cover the practice and procedure relating to appeals in the court of appeal and the Supreme Court, but regard must be given to the urgency of Election Petition tribunals¹⁰³.

2.7 COMMENCEMENT OF PRE-ELECTION DISPUTES IN THE COURT.

Proceedings in pre-election matters are commenced by the issuance of process out of the registry of a court. Such process may be a writ, a summons, a petition or originating motion, originating process, pleadings, orders, warrants depending upon the nature of the proceeding and all documents or written communication which service is required. However, the fact that an action is commenced by a wrong mode will generally not be fatal to the proceedings and will be treated merely as an irregularity¹⁰⁴. But in *Adebuyi v Mustapha*¹⁰⁵ the court held that where appellants failed to comply with the procedure specially provided for by the Practice Directions, they cannot be heard to complain of lack of fair hearing when faced with the consequence of their non-compliance.

However, the practice and procedure of the respective election tribunals is provided for in the first schedule to the Electoral Act 2010(As Amended) as well as election tribunal and court practice direction 2011. The Federal High Court or a State High Court has the power to hear and determine such pre-election disputes.

¹⁰¹ (2013) 6 NWLR (pt. 1351) 501

¹⁰² (2014) NWLR (pt.1427) 223

¹⁰³ Section 239 and Section 285 1999 Constitution (As Amended),and Section 133 Electoral Act 2010(As Amended)

¹⁰⁴ Order 5 of the High Court of Lagos State (Civil Procedure) Rules, 2012

¹⁰⁵ (2011) 2 NWLR at 127-128

Section 87(9) of the Electoral Act 2010(As Amended) provides;

Notwithstanding the provisions of this Act or Rules of a political Party, an aspirant who complains that any Section of this Act and guidelines of a Political Party has not been complied within the selection or nomination of a candidate of a political party for Election, may apply to the Federal High Court or Court of State for redress.

In *Ugwu v Ararume*¹⁰⁶, the court held that right of access to court is a Constitutional right which is guaranteed in the Constitution and no law, including that of a political party, can subtract from or derogate from it. Such a law will be declared a nullity by virtue of section 1(3) of the 1999 Constitution.

Proceedings in court either against an aspirant or candidate cannot stop the holding of primary election or convention. Even where the suit concerns the nomination in question, it cannot stop the holding of a poll.

Section 87 (11) Electoral 2010(As Amended) provides that; “Nothing in this Section shall empower Courts to stop the holding of primaries or general election under this Act pending the determination of the suit” The High Court is the first court of instance in pre-election matters. The practice and procedure as well as the rules of court for pre-election dispute before it are the same with other civil matters. The High Court is guided by the High court civil procedure rules of each State. The most used is the High Court Rules of Lagos or Abuja. Appeals may be made as of right against final decisions of High Courts. The rules provide that a statement of claim, list

of witnesses to be called at the trial, written statements on oath of the witnesses except witnesses on subpoena, and copies of every document to be relied upon at the trial be

¹⁰⁶ (2007) 12 NWLR (pt.1048) 367

brought before the Court. Where a plaintiff is not satisfied with the decision of the High Court or Federal High Court, the next step is to file an appeal in the court of Appeal. An appeal from the decision of the Court of Appeal goes to the Supreme Court in pre-election disputes. Pre-election trials undergo the rules of evidence just like other civil cases. In settling electoral disputes, oral evidence is not important; the court relies on documentary evidence. These are the documents containing all the facts that the court needs. Results for nominations in primary elections, and total number of votes in elections are the best form of evidence in the court or tribunal¹⁰⁷ An aspirant who complains of invalid substitution having had the highest number of votes must prove so to the court. The jurisdiction of the Federal High Court over pre-election matter is in addition to its general jurisdiction as contained in the Constitution¹⁰⁸. It has concurrent jurisdiction with the State High Court¹⁰⁹. The mode of commencing civil proceedings in the Federal High Court is also by writ of summons. Its decisions as it relates to pre-election disputes can also only be appealed against at the Court of Appeal and Supreme Court. Every Notice of Appeal shall be served personally. In determining pre-election disputes, a statement of claim must be accompanied with copies of every document to be relied on at the trial, list of non-documentary exhibits, list of witnesses to be called at the trial, and written statements on oath of witnesses. Every document to be relied upon at the trial is basically the votes casted at the primary election, congress or convention. Persons who can file suit are candidate in an election, and a political party which participated in the election¹¹⁰

¹⁰⁷ Aduloju B.A., *Impact of Judicial Activism on Electoral Law in Nigeria*, Pensbury Publishers, Abuja, 2013. p.120

¹⁰⁸ Section 251 of the 1999 Constitution (As amended)

¹⁰⁹ Ibid, section 252(1) and 272(3)

¹¹⁰ Ibid, section 137 (1)

it is only a member of the same party who can challenge the nomination of any candidate by a party.

In *Nagogo v CPC*¹¹¹ *Chukwuma Eneh*, JSC on how a member of a political party can challenge party's choice of candidate held;

For a member to effectively challenge the party's choice of a candidate for an elective office, he must have been an aspirant in the party's primaries and thus bring himself within the definition of an aspiration as provided by section 87(9) of the Electoral Act 2010. Invariably, he would have contested in the primaries.

INEC is not exempted as party to a suit. An aggrieved aspirant or candidate can join INEC to a suit before the court, or can sue it where a plaintiff feels that the wrong was done by INEC, or collaborated, or failed to carry out its duty where it should. INEC shall be made a respondent; and be deemed to be defending the petition for itself and on behalf its officers or such other persons.¹¹² There are only four grounds under which an election can be questioned, that is, the non-qualification of the returned candidate, the invalidity of the election by reason of corrupt practices or non-compliance with the provisions of the Act, and that the respondent was not duly elected by the majority of lawful votes or that the petitioner or its candidate was validly nominated but was unlawfully excluded¹¹³. Paragraph 42(1) of the first schedule empowers the court or tribunal to summon a person as a witness who has been concerned in the election. The tribunal has the power to limit the number of witnesses the party may wish to call at the hearing. Parties in election petition do not have the right or discretion to call the number of witnesses they desire like civil proceedings. Where a witness answers all the questions put to him or her truly, he gets

¹¹¹ (2013) 46 NWLR(pt. 37) lines 40 – 45

¹¹² section 137(3) Electoral Act 2010(As Amended)

¹¹³ sections 137 and 138 of Electoral Act, 2010 (As Amended)

a certificate of indemnity from the court or tribunal from the chairman or the presiding judge stating that the witness has answered all the questions put to him.

At the conclusion of hearing, judgment must be delivered in an open court. This includes members of the public. The tribunal as against normal courts must state all the issues that arose for determination in the petition. The court or tribunal must also give reason for its decision. In *Amaechi v INEC*¹¹⁴, the Supreme Court on 25th October, 2007 declared Amaechi the Governor of Rivers State and that Omehia should vacate the seat of Governor. The judgment became effective that very day, as Amaechi was duly sworn in as the Governor of the State, whereas, reasons for the decision were not given until 18th January, 2008. It is only the Supreme Court that has the power to give a bench ruling allowing or dismissing an appeal, and give its reasons later.

2.7.1 DETERMINATION OF PRE-ELECTION DISPUTES IN THE COURTS.

In the previous Electoral Acts, where it is established or proved before the court that a candidate was unlawfully substituted, or that irregularities took place in the conduct of primary elections or general elections, the candidate with the highest number of votes was sworn in without a fresh election ordered. This provision of the Electoral Act was criticized in *Amaechi v INEC*¹¹⁵. By the judgment, the Supreme Court voided the election of Celestine Omeiha and declared Rotimi Amaechi as the elected Governor of Rivers State without a fresh election conducted. The constitution clearly and unequivocally stipulates the mechanism by which a person can become the Governor of a state. Simply, by section 178, a person can only become the Governor of a state after an election in which he was duly elected. The argument and reasoning

¹¹⁴ (2008) 33 NSCQ 332 at 585

¹¹⁵ *ibid*

of the Supreme Court was that since Rotimi Amaechi won the primary and his substitution was illegal, he should be declared winner of the general elections. The argument and criticisms in these case and several others led to the amendment of section 145 of the 2006 Electoral Act. By the provision of Section 140 of the Electoral Act 2010 (As Amended), where illegal substitution in nomination process is established, or irregularities are proved in an Election, the Court should nullify the previous election, and order fresh Election. Fresh Election is conducted even when the candidate who won the election has already been sworn in.

Section 140 of the Electoral Act 2010(As Amended) provides:

140 (1).Subject to subsection (2) of this section, if the Tribunal or the court as the case may be, determines that a candidate who was returned as elected was not validly elected on any ground, the Tribunal or the court shall nullify the election

(2). Where election tribunal or court nullifies an election on the grounds that the person who obtained the highest votes at the election, the not qualified to contest the election, the election tribunal or court shall not declare the person with second highest votes as elected, but shall order a fresh election.

(3). If the tribunal or the court determines that a candidate who was returned as elected was not validly elected on the grounds that he did not score the majority of valid votes cast at the election, the election tribunal, or the court, as the case may be, shall declare as elected candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the constitution and this Act.

The amended Electoral Act provides that only persons or candidates who took part in an election shall be declared winner in an election.

Section 141 provides; “An election tribunal or court shall not under any circumstances declare a winner at an election in which such person has not fully participated in all the stages of the said election”. (underlining mine)

The Electoral Act provides for speedy hearing of election cases. Delay in election cases is also a denial of the right of a candidate who won. The case of *Dr. Chris Ngige v Peter Obi*¹¹⁶ has become a reference point in the analysis of the problems and challenges of Electoral dispute resolution. Peter Obi the then governorship candidate of the All Progressive Grand Alliance (APGA) filed his case on the 16th day of May, 2003 challenging the declaration of Dr. Chris Ngige as the winner of the election. The tribunal took more than two years to hear all the witnesses and delivered judgment on the 12th day of August, 2005. The appeal came up for hearing on the 23rd day of January, 2006 and judgment was delivered on the 15th day of March, 2006. The petitioner waited for 35 months to receive justice out of a mandate of 4 years tenure in office. The Electoral Act 2010(As Amended) gives an elected candidate the right to remain in office pending the determination of an Appeal. This means that a candidate who may not have been legally nominated or elected remains in power unjustly and enjoys all the rights and privileges attached to that office.

Section 143. (1) Provides that;

If the election tribunal or court, as the case may be, determines that a candidate returned as elected was not validly elected, then if notice of appeal against that decision is given within 21 days from the date of the decision, the candidate returned as elected shall, notwithstanding the contrary decision of the Election tribunal or the court, remain in office pending the determination of the appeal.

(2). If the election tribunal or the court, as the case may be, determines that a candidate returned as elected was not validly elected shall, notwithstanding the contrary decision of the Election tribunal or the court, remain in office pending the expiration of the period of 21 days within

¹¹⁶ (2006) All FWLR(pt. 330)p. 1041 at 1169 - 1170, paras D-G

which an appeal may be brought.

However the Electoral Act 2010(As Amended) has brought a change by specifying the time limit for concluding electoral disputes and appeals arising there from. Attempts have been made using the rules of court to fast track election petitions. Section 142 of the Electoral Act 2010(as amended) provides for accelerated hearing of an election petition, giving it precedence over all other cases and matters before the tribunal or court.

Section 142 provides that;

Without prejudice to the provisions of section 294(1) of the Constitution of the Federal Republic of Nigeria, an election petition and an appeal arising there from under this act shall be given accelerated hearing and shall have precedence over all other cases or matters before the Tribunal or Court.

Even with this amendment, the Electoral Act is silent on the expeditious resolution of pre-election disputes in the regular Courts. But in a quest to expedite the disposal of Election Petitions, the 1999 constitution has been amended and has specified the period of 180 days from the date of the filing of the petition within which election petition shall deliver its judgment. An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.¹¹⁷ After the 2007 general elections, 426 judgments at first instance delivered by election tribunals that sat throughout the country revealed that the number of petitions that succeeded was 96 and the number of petitions that failed for lack of merit was 222 before the Tribunal or Court.

¹¹⁷ Section 285(5)-(9) 1999 Constitution(As Amended)

2.8 CONCLUSION

To ensure democracy, legal frameworks have been put in place for political parties in the conduct of their affairs. Pre-election disputes may either be substantive or procedural and regulated by Laws through established institutions (INEC or the Political party concerned). It is the non-compliance with the Law, either by the members of the political parties, the political parties themselves and or INEC that most times lead to pre-election disputes or matters. The question of compliance or non-compliance with the Law cannot be determined by any judicial body without recourse to the Law(s).

It is in view of the above that this chapter examined the institutional and legal framework for elections in Nigeria. The chapter seeks to show and has indeed shown how the Laws and the institutions provided the necessary framework for election process in Nigeria. Specifically, the provisions of the 1999 Constitution (As Amended) were examined and the relevant provisions were examined.

The relevant provisions dealing with the modalities for the conduct of elections, qualification into the different elective offices, sponsorship of candidates for an election, registration of Political parties, its guidelines, the institutions (INEC and Political parties), and the Constitutional basis for association as well as other related issues were addressed. Where necessary, judicial decisions on the interpretation of some of the provisions were supplied to buttress on the position.

The Constitutional provision for electoral disputes and determination of cases through Courts and the observance of the Rules of Court was analyzed.

This chapter also examined the provisions of the Electoral Act 2010(As Amended). It was successfully shown that the Electoral Act sets out the elaborate institutional and regulatory framework for election process in Nigeria. The amendment to the Electoral Acts was also discussed. Political party Constitution as a legal framework was looked

at as it contains the rules guiding political parties which will make party rules binding on members.

The institution of INEC was specifically addressed. Its institutional, powers and function were highlighted and decided cases questioning the exercise of its powers and compliance by Political parties with the provisions of the Electoral Act were also examined.

In all, the legal and institutional framework necessary for subsequent discussions in the subsequent Chapters were set out and introduced.

CHAPTER THREE

THE LEGAL PROCEDURE FOR NOMINATION OF CANDIDATES

3.1 INTRODUCTION

Political parties are organizations whose members have values, ideals and aspirations in common and at least participate in the organized contest or struggles for political power¹¹⁸. They are associations formally organized with the explicit and declared purpose of acquiring and to some extent maintaining legal control, either singly or in coalition or electoral competition with other associations over the personnel and the policy of the government of an actual or perspective sovereign state. They are formed with the intent of controlling power through elections. They are identified by an official label that presents it at elections, to take candidates for public office. To achieve its aims and objectives, political parties nominate or select candidates in order to achieve its goal through party primaries¹¹⁹.

Electoral process entails understanding the concept of election and the processes associated with the conduct of elections. Election is a means by which a representative is chosen for a political party. The person chosen has the mandate to exercise on behalf of the group the authority to take decision on issues affecting their welfare. The process for choosing the representative defers from political party to political party depending on the rules set for it by the party. It also includes the conditions and processes for the nomination of candidates for elective posts. The 1999 Constitution (As Amended) does not only recognize the necessity for a viable party system, it makes it mandatory that only party members that are sponsored by the party are qualified to contest elections to the elective offices in Nigeria.

¹¹⁸ Sulaiman Y.B ., Political Parties and Democracy in Nigeria: Candidate Selection, Campaign and Party financing in Peoples' Democratic Party. Journal of Sustainable Development in Africa ,Vol. 13, 2011.

¹¹⁹ .Shehu A.T., Strenthening Judicial Intervention in Electoral Disputes in Nigeria: African Journal of social sciences, Vol.2, 74-88,2012.

To this extent, the Electoral Act provides for a system of internal democracy at the party level in the process of nomination of party members for the purpose of contesting elections. Nomination of candidates to contest elections into public offices makes the process “a purely private and internal affair of the political parties”¹²⁰

This chapter deals with the procedure for the nominations of candidates to elective positions by political parties.

3.2 NOMINATION OF CANDIDATES TO ELECTIVE POSITIONS BY POLITICAL PARTIES

The primary objective of democracy is to give the people the opportunity to participate and make choices regarding their affairs. Political parties exist to facilitate and make this participation of the citizenry in governance possible and easier. They organize and educate the electorate, and help to carry on with elections. As earlier noted, a candidate for elective office in Nigeria must be sponsored by a political party. Political parties cannot exist without having rules and regulations that govern their activities especially as it relates to nomination and sponsorship of candidates. They must fulfill the function of bringing into power an elected candidate through a credible, open nomination process. They perform this function through primary elections. Primary Elections can be defined as internal party processes that choose a political party's candidate(s) for the next general election by holding an internal election. They are agents of the candidates in gathering votes for an election. In *Ehinlawo v Oke & 2 ors*¹²¹, the court held that a political party has the unfettered right to nominate or sponsor a candidate it likes for any election and the courts have no jurisdiction to inquire into that issue.

¹²⁰ *ibid*

¹²¹ (2008) LRCN Vol. 165 Pt. 177

In *Olley v Tunji*¹²² where the court held on the duty of court to ensure that political parties comply with the provisions of the Electoral Act and party guidelines on nomination of candidates for election, the Court stated that it is not the duty of the court to nominate candidates for political parties but to see to it that in the process of nominating candidates for election, political parties comply with the provisions of the Electoral Act and their party constitution and to the guidelines relevant for the nomination of candidates.

The Constitution is concerned with internal democracy of political parties. For emphasis, Sec 228 of the 1999 Constitution provides that every political party must have guidelines and rules, including making laws for the conducts of party primaries, party congresses and party convention. However Section 221 of the 1999 Constitution (As Amended) provides;

“No association other than political party shall canvass for votes for any candidate at any election or contribute to the funds of any political party or the election expenses of any candidate at an election”. This means that only registered political parties can gather to nominate and send a candidate’s name to be elected.

Election is a process. It starts with qualification, nomination, withdrawal of nomination, substitution of earlier nominations and so on. Apart from the provisions of the Constitution dealing with qualification or disqualification of a candidate there are also provisions of the Constitution, Electoral Act, 2010 (As Amended) , INEC, and different political party Constitution which spells out steps or procedure to be taken towards the holding of a poll for nomination of candidates.¹²³ Generally the criteria for nomination of candidates is usually regulated by both the law (the Constitution of the Federal Republic of Nigeria and the Electoral Act) and

¹²² (2013) 10 NWLR (pt. 289) p. 28

¹²³ As noted in the Legal framework, the Constitution gives other organs right to make Laws to regulate Political parties.

Constitution of political parties. Rules and regulations are normally put in place for the conduct of free and fair elections.

A candidate for an election becomes a “nominee” after being formally nominated. In the case of *Tsoho v Yahaya*¹²⁴ his Lordship Justice Muhammad, JCA stated that; “Nomination is an act of suggesting or proposing a person by name to an election body as a candidate for an elective office”. This certainly forms part of the preliminary matters before actual election is conducted. Which means that the person nominated has not yet come to occupy that office. The Electoral Act provides that where a political party fails to comply with the provisions of the Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue.

In *Tsoho v Yahaya*¹²⁵ his Lordship Justice Muhammad, JCA, defined nomination is an “act of suggesting or proposing a person by name to an election body as a candidate for an elective office”. This certainly forms part of the preliminary matters before the actual election is conducted. The person nominated has not yet come to occupy that office. So he is not yet to be caveated and not ripe to be contested. If he jumps the hurdle of nomination his next herculean task is to possess the mandatory qualifications which will

admit him to contest the election. Once he stands for the election he can now be properly petitioned before the tribunal or he can himself petitioned others on any of the grounds upon which petitions can be filed to the tribunal as provided under the decree”.

In the Electoral Act, the nomination of candidate precedes the election and it is done by the political party. Only the political party can do the nomination of

¹²⁴ (1994) 4 NWLR (pt. 600,657) at p. 671-672

¹²⁵ *ibid*

candidate for the election. Just as in the Constitutional requirement to contest an Election, Section 106 of the 2010 Electoral Act(As amended) states :

A person shall be qualified for election under this part if;

- (a) Is a citizen of Nigeria.
- (b) Is registered as a voter
- (c) Has attained the age of 25 for Councillorship, 30yrs for Chairman and vice chairman;
- (d) Is educated up to at least the school certificate level or its equivalent.
- (e) Is a member of a political party and
- (f) Is sponsored by that party.

This means that no candidate for an election shall be nominated or allowed to contest unless he possesses all the necessary qualification as provided above. It is also obvious that the issues of candidature, nomination, screening, clearance and contesting as a candidate are very paramount and significant and which must precede the winning of any election. In other words, without such preliminaries having been conducted, it is impossible that any candidate would have been eligible for an election much more to have been a subject of consideration under S. 285 of the 1999 Constitution.

Political parties all over the world have devised means of choosing leaders and candidates for elective offices, the most democratic of them being the use of party primaries. Party primaries are the initial electoral contest amongst candidates for the purpose of winning the nominations of their parties for the general contest. For the purpose of nomination of persons for election to the various offices and the Legislatures, the Constitution provides for a system of control recognizing only

registered political parties as agents for nomination of individuals to contest in the elections.¹²⁶

The electoral process in Nigeria starts with the efforts of political parties in preparing for elections, through candidate selection, campaigning for votes, etc. Other steps include when election should take place, and how names of candidates for such election should be forwarded, withdrawn or substituted. They also include how a candidate himself can withdraw from the race and the time to take each of the foregoing steps.

An aggrieved person may seek redress on how those or any of these steps have (has) been taken especially where he can show that he has been adversely affected. Apart from party constitution which each party must have, the Electoral Act 2010(as amended) provides for the procedures for nomination or selection of candidates. Section32 (1) & (2) of the Electoral Act 2010 provides that;

- 1) A candidate for an election under this part of the Act shall be nominated in writing by such number of persons as prescribed by the commission whose names appear on the register of voters in the constituency as the commission may prescribe.
- (2) A person shall not nominate more than one person for election to the same office.

This is not peculiar to the Electoral Act of 2010(as amended). Candidate selection is one of the most important activities of political party apart from funding. Candidate selection and nomination procedures differ among democracies and among parties. There are two categories of candidates selected and/or nominated by political parties. Candidates are selected for manning party offices across all the branches and chapters of political parties and are as well selected for elective positions. Unlike party

¹²⁶ Shehu A.T., Strengthening Judicial Intervention in Electoral Disputes in Nigeria: African Journal of social sciences, Vol. 2, 74-88,2012.

leadership positions, for election into offices, candidates are selected by different political parties to compete in national or local elections. In any case, candidate nomination is one of the important functions of political parties across democracies. It is the primary screening device in the process through which the party in office is reproduced. The differences in candidate selection procedures among parties is by the nature of a political party, and intra-party decision making.¹²⁷ The extent to which parties achieve their candidate selection procedures, depends on the Constitution, electoral Acts and internal party rules, as well as the extent to which party leaders adhere to these laws. Before the coming of colonialists, each political unit had a traditional way of selecting their leaders.¹²⁸ When electoral colleges were introduced, stages starting with primary election to the election proper was adopted. For a nomination to be valid, it must meet statutory procedures. This is because a mere proposal of the name of a person by a political party to INEC does not amount to a valid nomination. *P.P.A v INEC*¹²⁹.

Nomination entails sending a candidate's name to INEC after being screened by his party. The nominated candidate is the only member whose name appears on the ballot papers on election date.

Nomination process or primaries in political parties has continued to be an issue of dispute among party members thus making it impossible for democracy to be institutionalized in Nigeria¹³⁰. In *PDP v Timipre Silva & 3 ors.*¹³¹, the court held that for a candidate to contest for an election he must belong to a political

¹²⁷ Sulaiman Y.B., Political Parties and Democracy in Nigeria: Candidate Selection, Campaign and Party financing in Peoples' Democratic Party. Journal of Sustainable Development in Africa, Vol. 13, 2011.

¹²⁸ Afe B., Election Law and Practice, First Edition, Intec Printers Limited, Ibadan, 2003 p.1

¹²⁹ (2010)12 NWLR (pt1203)70 at paras.G-H

¹³⁰ Orji Uzor Kalu, Political Parties And Rancorous Primaries, The Kalu Leadership Series, The Sun Newspaper, August 31, 2013.

¹³¹ (2012) 13 NWLR (pt.1316) 85

party and the party must nominate him to be its flag bearer. In *Kubur v Dickson*¹³² where the appellant's case was that the 1st respondent was not qualified to contest the election into the office of Governor of Bayelsa State, and over the question of who was the candidate for the party, the Court held on the issue of what constitutes evidence of nomination and sponsorship of candidates by a political party that publication of names of candidates by INEC is not evidence of sponsorship by a political party which nominated the candidate. Evidence of nomination and sponsorship of a candidate by a political party lies in the declaration of the winner of the party's primary at election conducted to elect the party's candidate for general election in question, coupled with the political party forwarding the name of said elected candidate to the INEC as its nominated candidate for the election. In *Uba v Ukachukwu*¹³³ the court held that the responsibility of INEC and its officers during any election is to act as an umpire, and to ensure that all parties comply with the requirement of the law on the election. Consequently, they must act and be seen as independent of any person or political party in the course of an election. By conferment on the INEC the power to ensure internal party democracy, it is to manage, direct and over see that both primary election and post-election activities are conducted well. INEC may with or without prior notice to the political party monitor and attend any convention, congress, conference or meeting which is convened by a political party.

The most flouted condition is giving notice for nomination of candidates. Where venues are changed, or dates fixed for such congress or conventions are changed, the commission finds it difficult to ascertain how the conduct of the primary was done. What irregularity was done and how the nomination process went. Such nominations

¹³² (2013) 4 NWLR (pt. 541)p. 574

¹³³ (2004) 10 NWLR (pt. 8) p. 260

shall be democratic as each member or delegate should have a right of choice.¹³⁴ In Nigeria, regulation of political parties is basically by the Constitution which is aimed at national integration and stability of political parties, and secondly, for the purpose of strengthening internal party democracy, and thirdly, to moderate electoral behavior of political party members. The constitution is very clear as to who is qualified to participate and contest election¹³⁵. However, even though the constitution states that all registered members of the party are qualified to contest or be nominated, the same constitution clearly states that any member of the party contesting election must be of good financial standing in the party.

By implication the same provision seems to favor only individuals with strong financial base or must obtain the approval of some wealthy political members. Political parties have a code of conduct, guidelines and regulations that govern them. But the primary procedures for nomination is detailed in the Electoral Act and as given by INEC in its guidelines.

3.3 PROCEDURE FOR NOMINATION UNDER SOME POLITICAL PARTY CONSTITUTION

Political parties in Nigeria all have laid down guidelines for nomination of its candidates. They provide explicitly how their candidates shall be nominated; they are at liberty to draft their electoral guidelines for primary elections. The guideline differs from political party to political party. Parties usually adopt the same nomination procedure, the difference is usually on the amount paid for nomination and expression of interest forms.

¹³⁴ Section 85(3) Electoral Act 2010(As Amended)

¹³⁵ AttahiruJega, „Inter party Collaboration, National Stability and Democratic Consolidation In Nigeria: Being a keynote address at the All Nigeria Political Parties And Political Stakeholders Summit Abuja , Thursday, June 12, 2014.

A mere proposal of the name of a candidate by a political party without more, does not amount to a valid nomination. *P.P.A v INEC*¹³⁶ the nomination of candidate can be by way of primary election, selection, appointment or a combination of all.

The various parties also made provisions for party primaries for the selection of candidates. The Peoples Democratic Party provided for its nomination procedure in chapter VIII, section 50 of its Constitution (2012 as amended), Article 20 of the All Progressive Congress (APC). The APC, however introduced a new dimension of a yes or no vote for candidates that emerged by consensus so as to forestall discontent that may arise from perceived feeling of imposition. The All Progressive Grand Alliance (APGA) also made similar provisions in article 24 of the party. However, APGA constitution gave the National Executive Committee (NEC)) the powers to identify and choose a credible and nationally acceptable person who shall be presented to the national conventions for ratification with respect to presidential candidates.

Selection of vice presidential candidates is the preserve of the national officers of the party in consultation with the presidential candidate, grand patrons and Board of trustees' chairman. Similar powers to select credible candidates were also given to state executive committees, local government and ward executive committees with approval from NEC.

However, these legal provisions are breached leading to defections and litigations associated with party primaries in Nigeria, despite the codes of conduct for nomination of candidates spelt out for political parties which they must abide to. These guidelines and regulations are issued in collaboration with political parties, yet parties deviate from their own Constitution and the laid down laws. These rules aim at streamlining, standardizing and simplifying many processes such as registration of

¹³⁶ (2010)12 NWLR (pt.1203)70

parties, party and candidate finance, nomination of candidates, party agents and monitoring of political parties¹³⁷

The Political Parties' Code of Conduct 2013 states that: "All political parties shall ensure, and practice internal party democracy by adhering strictly to the provisions of their Party's Constitution."¹³⁸

In *Etim v Obot*¹³⁹, the court held that a political party and its candidate for an election have independent recognition and rights. The candidate for an election is an individual who was validly nominated by his or her political party.

However, by constitutional requirement, for conduct and procedure for nomination and selection of candidates, constitution and other statutory rules of the political parties must accordingly provide:

- a) For the conduct of a periodic election on a democratic basis for the election of its principal officers, and executive members and members of its governing body, at regular intervals not exceeding four years;
- b) Members of its executive committee and other principal officers must reflect the federal character of Nigeria, and these officers must belong to different states not being less than 2/3 of the 36 states and FCT¹⁴⁰.

Party constitution provides the *modus operandi* for the appointment, selection, or nomination of party members.

INEC spelt out in Article 2.1 of the Political Parties' Code of Conduct that all political parties, their leaders, members, supporters, and candidates shall adhere to all existing laws, and regulations pertaining to elections, and the conduct of political parties, especially the election guidelines established by INEC through the authority of the

¹³⁷ op cit n. 18 p.65

¹³⁸ Article 2.5 of the Political Parties' Code of Conduct 2013.

¹³⁹ (2010) 12 NWLR (pt.1207) at 195,para.F

¹⁴⁰ Section 223(1) and (2) 1999 Constitution(As Amended)

Electoral Act 2010, (as amended), the Constitution of the Federal Republic of Nigeria, (as amended, and shall do nothing whatsoever, individually or collectively to undermine, flout, disrespect or circumvent them.

The Amended Electoral Act 2010 Section 87(1) provides the procedure for nomination. It provides for a choice between two procedures for the nomination of candidates by parties to be either by direct or indirect elections. In direct elections, all members of the party can vote for their candidate, while indirect elections involve the election of delegates for primaries where the delegates will elect candidates from a set of registered aspirants. Delegates are those party members selected for the purpose of nominating aspirants.

Section 87(8) provides for restriction of some delegates. It provides;

“a political appointee at any level shall not be a voting delegate at the convention or congress of any political party for the purpose of nomination of candidates for any election except where such political appointee is also an officer of a political party

Sections 87(4) to (11) Electoral Act 2010(as amended) stipulates the methods of organizing the primaries. In the case of parties that choose the indirect form of primaries for all the elective positions, namely, President, Governor, Senate, House of Representative, States Houses of Assembly, Chairmanship and councilors of local government area councils.

However, where a political party intends to adopt the system of indirect primaries for the choice of its candidate, it shall state so in its Constitution .Section 87 (7) of the Electoral Act 2010 states that ;”A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting.”

A political party shall hold a special convention in the case of a presidential candidate in each of the 36 States. This is done through chosen delegates of the party. The

convention shall be held on dates chosen by the party, but with the notification of INEC. As it is the practice, the candidate with the highest number of votes shall be declared the winner, whose name shall be submitted to INEC.

A congress is held for nominations of gubernatorial aspirant. The congress is held in each of the local government areas of the State and the candidate with the highest number of votes is would also have his name submitted to INEC. For Senatorial and House of Representative memberships, a congress is also held in the Senatorial District or Federal Constituency where delegates choose the aspirant of their choice. Chairmanship candidate of Area Council entails holding of congress in the area council , whereas the procedure Councillorship nomination is by direct primaries in the ward with the name of the highest candidate forwarded to INEC.¹⁴¹

Even where a sole candidate is selected by a political party it must be ratified through a convention or congress. By the provision of Sec 87(1) of the Electoral Act 2010(As Amended), a political party seeking to nominate candidates for elections shall hold primaries

for aspirants to all elective positions.

The Electoral Act provides for equal opportunity of votes by political party members. Aspirants should be given the right to be voted for. Section87 (3) states that a political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

For instance, in the Peoples Democratic Party (PDP) where the sole candidate was former President Goodluck Jonathan for the 2015 presidential elections, the PDP having taken a decision at the National Executive Committee (NEC) meeting to adopt former President Goodluck Jonathan as the sole candidate said no other party member

¹⁴¹ Section 87(4) Electoral Act 2010(As Amended)

would come up as an aspirant for the position¹⁴². But a convention was held in line with the provision of the Electoral Act (2010 as amended) which said primaries must be conducted, for the nomination of candidates be it presidential candidates or any elective office. It should be noted that, pending suits in the Court cannot stop the holding of a convention or congress. Section 87(11) of the Electoral Act 2010(As Amended) provides that; “Nothing in this Section shall empower Courts to stop the holding of primaries or general election under this Act pending the determination of the suit”.

3.3.1 PROCEDURE FOR NOMINATION IN THE PEOPLES

DEMOCRATIC PARTY(PDP)

Article 16.2 of the People’s Democratic Party Constitution provides that every registered member of the party who has satisfied the requirements for nomination and election under its Constitution, the Constitution of the Federal Republic of Nigeria or any other law, rules or regulations in force shall be eligible to contest for any of the officers of the party. To be eligible to re-contest for any office as long as they conform to the provisions of the party guidelines.

Article 16.3 of the party’s Constitution provides the guidelines for election to any office of the party which shall be approved by the National Executive Committee of the party in accordance with provisions of its Constitution. In *Adebayo v PDP*¹⁴³ Per Chukwuma – Eneh, JSC on the power to nominate candidates for elective offices including that of governor of a state held;

“By the constitution of the PDP, the power to nominate candidates for elective offices including that of governor of a state is vested in the National Executive body of the party and not in the state Executive of the Party and so in this instance, the 3rd

¹⁴² Shehu A.T., Strengthening Judicial Intervention in Electoral Disputes in Nigeria: African Journal of Social Sciences, Vol. 2,74-88, 2012

¹⁴³ (2013) 17 NWLR(pt.1382) SC

respondent has been properly nominated by the national executive committee of the party. See S. 87 (4) (b) (11), C(11) and (9) of the Electoral Act, 2010 (as amended). This is so because the action by the appellant and the instant dispute has arisen by the appellant and the instant dispute has arisen from the primaries conducted by the National Executive of the party and 3rd appellant has taken part in the said primaries. Article 16.4 of the party's Constitution provides that no member of the party shall be qualified for nomination or election or appointment into any of the offices of the party, unless he or she has been a registered member for at least eighteen months, and is of good financial standing in the party, except there is a waiver by the appropriate executive committee.

Article 17.2(g) of the party's Constitution provides that there shall be a minimum of two (2) years membership span for a member to be eligible to stand for election into any party or any public office unless the appropriate executive committee rules to the contrary. Where appropriate committee rules, it must be approved by the immediate higher executive committee.

The PDP has five organs at the national level which consists of the National Convention (NC), National Executive Committee (NEC), National Working Committee (NWC), Board of Trustees (BOT), and the National Caucus. They are the overseers of the party and ensure observance of the rules of the party. The party has the Ward, Local Government, Senatorial District, State, Zonal and National levels¹⁴⁴

However, the National Executive Committee and the Board of trustees enjoy unequalled powers that cannot be challenged by other levels of party authorities. In its preamble, the PDP guideline provides that the exercise of the powers conferred on it by Sections 31(2)(j) and 50 of the Constitution of the People's Democratic Party and

¹⁴⁴ Sulaiman Y.B., Political Parties and Democracy in Nigeria: Candidate Selection, Campaign and Party financing in Peoples' Democratic Party. Journal of Sustainable Development in Africa, Vol.13, 2011.

all other powers enabling it in that behalf, the National Executive Committee of the People's Democratic party issues guidelines for the conduct of primaries for the election of party candidates for the offices of the President of the Federal Republic of Nigeria, Governor of a State, member of the National Assembly and member of the House of Assembly of a State. Members of the Political party are also to note that under the Amended Electoral Act, 2010, where candidates of political parties emerge through primary elections not duly conducted and monitored by INEC, then due process has not been followed.¹⁴⁵

The 1999 Constitution and INEC statutory rules mandated parties to conduct periodic democratic congresses and conventions to select these officers. Therefore Article 16, Section 16 1-4 of the PDP Constitution stated the mode of election of these officers, that every registered member of the party who has satisfied the requirements for nomination and election under its Constitution, the Constitution of the Federal republic of Nigeria or any other law, rules or regulations in force shall be eligible to contest for any of the offices of the party provided that officers of the party shall also be eligible to re-contest for any office as long as they conform with the provision of the party guidelines.

The PDP Constitution in cognizance to the provisions of the Electoral Act states that political parties are no longer allowed to change or substitute candidates whose names have been submitted to INEC, except in the case of death or withdrawal by the candidate (Section 33).

Where a presidential candidate is to be nominated in the PDP, it is by a special national convention in the Federal Capital Territory or any other place within the federation that is agreed by the National Executive Committee of the Party where

¹⁴⁵ Section 87(1) (a) 2010 Electoral Act (As Amended)

delegates shall vote for each of the aspirants at the designated centre on a date approved by the National Executive Committee (NEC).

The delegates at the presidential convention include;

- i. The National Chairman of the Party and other members of the National Executive Committee;
- ii. The President and Vice-President of the Federal Republic of Nigeria, who are members of the Party;
- iii. All members of the National Assembly, who are members of the Party;
- iv. All State Governors and Deputy Governors, who are members of the Party;
- v. All gubernatorial candidates of the Party shall be automatic delegates to the convention;
- vi. All members of the State Houses of Assembly, who are members of the Party;
- vii. Members of the Board of Trustees;
- viii. All members of the zonal working committee and State Party Chairmen and Secretaries including those of the Federal Capital Territory, Abuja;
- ix. All state women and youth leaders, including those of the Federal Capital Territory, Abuja;
- x. All party chairmen of the Local Government Areas;
- xi. One national delegate elected from each local government area congress;
- xii. All elected Local Government Council Chairmen, who are members of the Party;
- xiii. Former members of the National Working Committee who are still members of the party;
- xiv. Former Deputy Presidents of the Senate and Deputy Speakers of the House of Representatives, who are still members of the Party.

Substitution of nominated presidential candidate has never been a subject of litigation in Nigeria. For example, General Muhammadu Buhari had always been the presidential flag bearer of the party ANPP later CPC under the principle of consensus

candidate. Issues on nomination and substitution of candidates are usually in the other elective offices.

For nomination of a gubernatorial candidate, it is by a special congress in the State Capital with delegates voting for each of the aspirants at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the Party. The delegates for State congresses are the State chairman, and all other executives as delegates for the presidential convention, but the members as delegates shall be at State level. Other delegates include , the members of the National Assembly from the State and the members of the State House of Assembly, who are members of the party, all elected Local Government Council Chairmen and Vice Chairmen who are members of the party, all Local Government Party Secretaries and treasurers, all Local Government Women and Youth Leaders, three delegates per ward elected at ward congresses, at least one of whom shall be a woman, all of whom shall cease to function at the conclusion of the congresses for which they were elected, former members of the State working committee who are still members of the party, former Governors and deputy Governors produced by the party who are still members of the party, and former speakers and deputy speakers of the State House of Assembly produced by the party who are still members of the party.

The essence of having the aforementioned delegates is to ensure a transparent nomination exercise. All members of the party cannot be delegates of the party.

Nomination for senatorial candidate and House of Representatives also requires a Special Congress at a designated centre in the Senatorial District in the case of senate, and Federal Constituency for House of Representatives, on a date approved by National Executive Committee (NEC). As a requirement also, the aspirant with the highest number of votes at the end of voting, shall emerge as the Party's candidate.

The delegates to the Senatorial Special Congress shall all be delegates to the State Congress from the Senatorial District in question, while the delegates to the Special House of Representatives Congress shall be all delegates to the State Congress from the Federal Constituency in question.

For nomination of a State Assembly Candidate, the Party shall hold a Special Congress at a designated centre in the State Assembly Constituency on a date approved by the National Executive Committee (NEC). Again, the aspirant with the highest number of votes at the end of voting, shall emerge as the Party's candidate.

The delegates to State Assembly Special Congress are ;

- i. All delegates to the State Congress from the State Assembly Constituency; and
- ii. Other members of the Local Government Executive Committee from the State Assembly Constituency who are not delegates to the State Congress.

To be nominated, an aspirant to the office of President of the Federal Republic of Nigeria in the primary election of the Party shall obtain the Expression of Interest Form Code PD002/P . Upon payment of the prescribed non-refundable fee of Two Million Naira (N2,000,000.00) from the National Secretariat of the party or such other place as may be designated by the National Executive Committee of the Party, and, on completion, return same to the National Secretariat. Payment of mandatory fees gives an aspirant a chance to be on the list of aspirants to be nominated and thereby subsequently be on the list of voters if he wins the primary elections. No aspirant can claim right where he did not express his interest to be nominated by paying the prescribed nonrefundable fee. This is the first evidence in the Court to prove that the aspirant paid the sum.

However, a nomination Form (Code PD003/P)is bought from the National Secretariat of the Party or such other place designated by the National Working Committee of the Party and evidenced upon payment of the prescribed non-refundable fee of Twenty Million Naira (N20,000,000); save that female aspirants

shall be exempted from the payment of the prescribed nomination fee. This is to give women a chance to participate in politics. An aspirant shall be nominated by not less than 60 members from at least two-thirds of all the States of the Federation, who shall be registered voters in their respective Local Government Areas and also registered members of the Party. The documents to be attached to the nomination form include; a copy of the Voter's Registration Card of the aspirant, a copy of the Party Membership Card of the aspirant, the nomination forms shall be accompanied by a sworn declaration made before a Commissioner of Oaths or Notary Public undertaking to abide by the guidelines, all laws and any rules or regulations made by the Party relating to the conduct of primary elections.

Where an aspirant gives false information, it shall be a ground for disqualification or substitution where the party finds out. Therefore, an aspirant shall ensure that all the information supplied by him in the relevant nomination form are true and correct. However, the decision of National Executive Committee of the Party on all primary election matters shall be final and binding.

As a requirement, to be eligible for nomination, just as provided by the 1999 Constitution, a presidential candidate under the PDP guideline must not below the age of 40 years, he must fulfill all the conditions set out in the Constitution of the Federal Republic of Nigeria 1999, the Constitution of the party ,the provisions of any other relevant law and these Guidelines, these include the Electoral Act.

He must also be duly registered financial member of the Party, and must resign or retire from office if a political appointee, civil servant, public servant or party official not later than 7 (seven) days before the date of the collection of forms for the Ward Congresses. Since educational qualification is mandatory in the 1999 Constitution, a presidential aspirant must possess educational qualification not below the level of Senior Secondary Certificate or its equivalent;

By the guidelines, a presidential candidate shall not be nominated if he or she fails to produce his personal income tax certificate, or any evidence that he or she has paid income tax for the last preceding three years or evidence of exemption from payment of personal income tax, or if he produces a false birth certificate or declaration of age, for the purpose of the primary election, or has been indicted for any misconduct set out in Section 58(1) of the Constitution of the Party and has been punished in accordance with Section 59(1), or dismissed from public service, is a member of a secret society, or has been convicted by a court of competent jurisdiction of any criminal offence involving homicide, fraud or dishonesty or the sale or use of narcotic drugs or any other psychotropic substances by any court of competent jurisdiction in Nigeria. Or within the Commonwealth or elsewhere; or under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind, or is an undercharged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other country; or has not been a member of the Peoples Democratic Party (PDP) for at least 2 (two) years preceding the primary election, except if waived by the appropriate Executive Committee of the Party; or has been convicted for embezzlement or fraud by a court of competent jurisdiction.

Any aspirant who gives false information or makes false declaration in the nomination form shall be disqualified. In a presidential primary election at the Special Convention, the result shall be ascertained by counting the votes cast for each aspirant and no aspirant shall be declared nominated or elected as the flag bearer of the Party unless he has polled the highest number of the votes cast. The designated date, time and venue for the Special National Convention shall be published and made known to members of the Party at least 7 days before the date for the presidential primary election. Voting at the presidential primary election shall be by the modified open ballot system otherwise known as open secret ballot.

However, the nomination procedure for an aspirant to the office of Governor of a State applies *mutatis mutandis*. He or she must have attained the age of thirty five (35) years or above, and paid for expression of interest form for a non-refundable fee of one million Naira (N1,000,000). He shall also pay for a nomination form of (N10,000,000) from the National Secretariat of the party or such other place as may be designated by the National Executive Committee on the recommendation of the National Working Committee of the party. Female aspirants shall be exempted from the payment of the prescribed nomination fee. A governorship candidate shall be nominated by not less than 45 persons from at least two-thirds of the Local Government Areas within the State, who shall be registered voters in their respective Local Government Areas and registered members of the party. The Chairman of the State Electoral Panel shall be the State Returning Officer for the purpose of directing and supervising the gubernatorial primary election under the guidelines. All the delegates to the National Assembly Special Congress shall assemble in the Constituency Headquarters. The Constituency Headquarters shall be as prescribed by the Independent National Electoral Commission.

The delegates to the Senatorial and House of Representatives Special Congress shall be all delegates to the State Congress from the respective Senatorial Districts and Federal Constituencies.

Furthermore, the procedure for national assembly aspirants is the same with presidential and gubernatorial aspirants. He or she must have attained the age of 35 (thirty five) years in the case of Senate and 30 (thirty) years in the case of House of Representatives and must pay a non-refundable fee for expression of interest form for (N500,000.00) and a nomination form for non-refundable fee of Four million naira (N4,000,000.00) for a Senatorial aspirant and two million naira (N2,000,000.00) for a House of Representatives aspirant from the National Secretariat of the party or such other place as may be designated by the National Executive Committee on the

recommendation of the National Working Committee of the Party. Female aspirants are, however, exempted from the payment of the prescribed nomination fees.

However, the primary election shall be held at the Senatorial district Headquarters or Federal constituency headquarters respectively. The mode of nomination is by the delegates assembling in the constituency headquarters. The delegates shall be all the delegates to the State congress from the respective Senatorial Districts and Federal Constituencies.

The nomination procedure for State houses of assembly is as provided for president, governors of state, national assembly. An aspirant shall also obtain the Expression of Interest Form and pay a non-refundable fee of two Hundred Thousand Naira (N200,000.00) from the National Secretariat of the party or such other place as may be designated by the National Executive Committee on the recommendation of the National Working Committee of the Party. He or she shall pay for nomination form for a non-refundable fee of one million naira (N1,000,000.00). Female aspirants are also exempted from the payment of the prescribed nomination fees.

After the conclusion of any of the primaries, by the provision of the PDP guideline, the National Chairman and the National Secretary of the Party shall convey all the final result of the primary elections as approved by the National Executive Committee of the Party containing a detailed list of party candidates for various elective public offices to the Independent National Electoral Commission (INEC). The National Executive Committee on the recommendation of the National Working Committee may substitute the name of a candidate earlier submitted to the Independent National Electoral Commission (INEC) if the nominated candidate dies or withdraws.

Any reference to Senatorial District, Federal Constituency or Wards and Local Government Area in these Guidelines shall apply to the Senatorial District, Federal Constituency, Wards and Area Council in the Federal Capital Territory, Abuja.

3.3.2 PROCEDURE FOR NOMINATION IN ALL PROGRESSIVE CONGRESS (APC)

Article 16.1 of the party's Constitution provides that all party post prescribed by the APC Constitution shall be filled by democratically conducted elections and in accordance with the guidelines that may be approved by the National Executive Committee of the party.

Article 16.2 of the APC Constitution provides that in the event of nomination, elections or appointment for the formation of, or participation in government, the national executive committee shall make rules and regulations for the selection of candidates in consultation with the State executive committee. Article 20 of the APC provides for the nomination of candidates for election into public offices.

The preamble of the APC guideline provides that; "The guidelines will without prejudice conform to the provisions of the Party's Constitution, the 2010 Electoral Act and the Constitution"

On minimum requirements for nomination their guideline states that in conformity with the established provisions of the Constitution of the Federal Republic of Nigeria, the qualifications for aspirants to respective offices in State House of Assembly, House of Representatives, Senate, Governor and for President, the party prescribes that aspirants seeking public office on the platform of the party shall be Nigerian citizen, educated up to at least School certificate level or its equivalent. For House of Assembly and House of Representatives, the aspirant has attained the age of 30 years. For a seat in the Senate or Governorship, the aspirant has attained the age of 35 years and for the President, the aspirant has attained the age of 40 years.

The party prescribes that aspirants seeking public office on the platform of the party shall not have:

- i. Been adjudged to be a lunatic under any law in Nigeria or otherwise declared to be of unsound mind.
- ii. Been under a sentence of death imposed on him by any court of law or tribunal in Nigeria or a sentence of imprisonment or fine for an offence involving dishonesty or fraud.
- iii. Been convicted and sentenced for an offence involving dishonesty or found guilty of contravention of the Code of Conduct within a period of 10 years before the date of the election.
- iv. Been adjudged or declared bankrupt under any law.
- v. Remained as an employee of the Public Service within 30 days preceding the date of an election.
- vi. Be a member of a secret society.
- vii. Been convicted for embezzlement or fraud by a Judicial Commission of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, or any other Law by the Federal or State Government which conviction has been accepted by the Federal or State Government.

An aspirant shall be a registered member of the party at the ward of his or her choice, pay the prescribed fees, not be a member of any other political party. The Screening Committee established by the party shall be responsible for all activities in respect of the party's screening process and ensure compliance with the requirements and guidelines as provided by the party. The Committee's decision shall however be subjected to review by the screening appeal committee and final decision of the National Working Committee or National Executive Committee. The screening committee shall verify certificates and documents. Only aspirants fully cleared by the party shall be eligible to stand election at the party's primaries.

Consequent upon the aspirant complying with provisions of the party's Constitution, he shall complete nomination forms specifically provided for the office being sought after having paid the prescribed Expression of Interest, and Nomination Fees.

For nomination to House of assembly of a State, the APC guideline provides that the Local Government, State and National Executives, all elected members of the party and all other statutory delegates to the National Convention from the constituency shall vote by secret ballot at the constituency headquarters and the aspirant with the highest number of votes shall be announced as the winner accordingly.

For nomination to the National Assembly, the following party members shall be present;

- a) All Members of the Ward Executive from the Federal Constituency/ Senatorial Zone.
- b) All Members of the Local Government Executive Committee from the Local Government Areas in the Federal Constituency/ Senatorial Zone
- c) All Members of the State Executive Committee from the Federal Constituency/ Senatorial Zone.
- d) All Members of the National Executive Committee from the Federal Constituency/ Senatorial Zone.
- e) All Members of the Board of Trustees and National Caucus from the Federal Constituency/ Senatorial Zone.
- f) All Elected Persons from the Federal Constituency/ Senatorial Zone.
- g) All Other Statutory Delegates to the National Convention.

Members shall assemble at their respective Federal Constituency / Senatorial Zone Headquarters and vote by secret ballot. The aspirant with the highest number of votes shall be announced as the winner accordingly.

For Governorship primaries, there shall be 12 principal officers of the Ward as Executive Committee comprising of the Chairman, Vice-Chairman, Secretary,

Women Leader, Youth Leader, organizing secretary, treasurer, Legal Adviser, Publicity Secretary, Welfare Secretary, Auditor, Financial Secretary.

There shall also be all members of the Local Government Executive Committee from all the Local Government Areas in the State, all members of the State Executive Committee, all members of the National Executive Committee from the State, all members of the Board of Trustees and National Caucus from the State, all Elected Persons from the State, and all other Statutory Delegates to the National Convention from the State.

Members shall vote by Secret Ballot at the state capital and the aspirant with the highest number of votes shall be announced as the winner accordingly.

Nominations for presidential primaries shall be by all Delegates to the National Convention as stated in Article 12(i) of the party Constitution. The members are the Board of Trustees (BOT), National Chairman and all members of the National Executive Committee, serving and past Presidents and Vice Presidents of the Federal Republic of Nigeria who are members of the party, serving and past Governors and Deputy Governors of the States of the Federal Republic of Nigeria who are members of the party, serving and past members of the National Assembly who are members of the party, serving and past Speakers, Deputy Speakers and other principal officers of the State Houses of Assembly who are members of the party, members of the States working Committee (including that of the Federal Capital Territory, Abuja) of the party, all party Chairmen and Secretaries of the Local Government Areas/Area Council of the Country.

Others are all Elected Local Government Council/Area Council Chairmen of the Country who are members of the party, three (3) Elected Delegates (at least one of who must be a woman) from each Local Government Area/Area Council of the Country.

Members shall vote by Secret Ballot at a National Convention which shall be convened for that purpose, collation of results shall be made and the aspirant with the highest number of votes shall be announced as the winner accordingly.

3.3.3 PROCEDURE FOR NOMINATION IN ALL PROGRESSIVE GRAND ALLIANCE (APGA)

Article 24 of the party's Constitution provides for nomination of candidate for an election at any level. It went further to provide that the National Executive Committee shall formulate guidelines and regulations for the nomination of candidates for election into public offices at all levels, subject to the provisions of its Constitution.

Presidential Candidate for APGA, aspirants shall be nominated as candidate for the party at the national convention. But where the National Executive Committee identifies a credible and nationally acceptable person it shall nominate and present such a person for ratification only at the national convention as the party's presidential candidate.

For Vice Presidential Candidate the nomination of the vice presidential candidate shall be selected by the national principal officers in consultation with the presidential candidate, the grand patrons and board of trustees chairman. For Gubernatorial Candidate aspirants for the office of the governor of a state shall be nominated by the state congress subject to the approval of the national executive committee but where the state executive committee identifies a credible and acceptable person it shall nominate and present such a person for ratification only at the state congress at the state governorship congress of the party, such ratification shall be approved by the national executive committee.

The deputy gubernatorial candidate shall be selected by the state principal officers in consultation with the gubernatorial candidate. The names nominated candidates shall be forwarded to the National Executive Committee for the approval.

For nomination of National and State Assembly Members, the nomination of the candidates for the national Assembly (Senators and House of Representatives) and state assemblies shall be made by the affected local government congresses subject to the approval of the National Executive Committee, but where a credible and acceptable persons have been identified by the affected local government executive committees, it shall forward the name of such persons after due consultation with the state committee to national executive committees to the National Executive Committee also for approval.

Nomination of councillorship and Chairmanship candidate for a local government shall be made by the ward congress/local government congresses subject to the approval of the National Executive Committee, but where an acceptable and credible person has been identified by the ward executive committee/local government council executive committees and after due consultation with the state executive committee shall forward such candidates to the national executive committee for approval. However, the selection of deputy chairmanship candidate shall be made by the local government principal officers in consultation with the chairmanship candidate and shall be subject to the approval of the national executive committee.

3.3.4 ROLE OF POLITICAL PARTIES IN NOMINATION

Political parties have the exclusive role of nomination and sponsorship of candidates to an election. After nomination of candidates, political parties must submit list of its

candidates to INEC. In the case of *Enemou v Duru & sons*¹⁴⁶ the court of appeal stated thus: it is also obvious that the issues of candidature, nomination, screening, clearance and contesting as a candidate are very paramount and significant and which must precede the winning of any election.

In other words, without such preliminaries having been conducted, it is impossible that any candidate would have been eligible for an election much more to have been a subject of consideration under S. 285 of the 1999 Constitution.

By Section 31(1) of the Electoral Act 2010(as amended),every political party shall not later than 60 days before the date appointed for a general election under the provisions of the Act, submit to the commission in the prescribed form the list of the candidates the party proposes to sponsor at the elections.

(2) The list of the information submitted by each candidate shall be accompanied by an Affidavit sworn to the candidate at the High Court of a state, indicating that he has fulfilled all the constitutional requirements for election into that office.

(3) The commission shall within 7 days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election.

The problem with political parties is not the adherence to this provision, but substitution of names after the nomination exercise. The Electoral Act 2010 categorically prohibits the act of substituting candidate neither does it approve of double nomination.¹⁴⁷

To avoid cases of intimidation on nominated candidates, the Electoral Act states that a person who has subscribed as a nominator shall not, so long as the candidate stands

¹⁴⁶ (2004) 9 NWLR (pt. 877) at 112

¹⁴⁷ section 32(1) and (2) Electoral Act 2010(As Amended)

nominated withdraw his nomination.¹⁴⁸ This provision of the Electoral Act was reiterated in *Kalgo v Faruk*¹⁴⁹

However, political parties are not allowed to substitute candidates already submitted to INEC. Parties intending to change any of its candidates for any election must comply with the provision of sec 33 Electoral Act. In *Balonwu & ors v Ikpeazu*¹⁵⁰, the Court held that once a political party has presented a candidate and the candidate is screened and once a political party presents the name of its candidate for election to INEC, and the candidate is screened and cleared, political party cannot substitute a candidate and has no hand in the election process.

Section 33 of the Electoral Act specifically states that “A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 32 of this Act, except in the case of death or withdrawal by the candidate.”

Sec 34 in the Electoral Act 2010(As Amended) provides that;

“34(1) a political party intending to change any of its candidates for any election shall inform the commission in writing not later than 60 days to the election,

34(2) any application made pursuant to subsection (1) of this sections shall give cogent and verifiable reasons;

34 (3) except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section. The law empowers INEC to seek clarifications in conformity with the law”.

The case of late Prince Abubakar Audu of Kogi state in the November 21 2015 general elections poses a lot of questions on the position of the law as it relates to death of a candidate either in an inclusive or conclusive general election. There are diverse views on the issue. Some argue that section 33 of the Electoral Act 2010(As

¹⁴⁸ Ibid, section 32(5)

¹⁴⁹ (2009) All FWLR (pt.475) 1752 at 1769

¹⁵⁰ (2005) 13 NWLR (pt. 947) 75 at 112

Amended) gives political party the right to substitute its candidate in the middle of an election if the candidate dies or withdraws. While others argue that section 36(1) of the same Act provides that substitution will only be made when an election is concluded or before voting begins. The section provides for if after the time of delivery of nomination paper and before the commencement of the poll, a nominated candidate dies. Late Audu was said to have died after the announcement of the results by INEC and after INEC declared the election inconclusive. The requirement of the Act is notification within two (2) weeks of a date of new election after the death of a candidate¹⁵¹. However, section 33 only envisages death after primaries and not during general elections. Nomination of candidates in pre-election disputes is not as it relates to death of a candidate in general elections.

3.4 PROCEDURE FOR NOMINATION UNDER THE ELECTORAL ACT 2010(As Amended)

The procedure for nomination and selection of candidates has witnessed modifications in the previous electoral Acts, this as a result of the irregularities in the nomination process.

The procedure for the conduct of elections commences with a person affiliating or registering with a political party and participating in the primary election of the political party for the Act is clear that withdrawal of a nominated candidate should be communicated to the Commission no later than 45 days to the election¹⁵². *Usani v Donaald Duke*¹⁵³ However, The Electoral Act is silent on withdrawal by a Political party from the Poll after candidates have been nominated.

¹⁵¹ Section Sec 85(1)(2)(3) and 86(1) Electoral Act 2010(As Amended)

¹⁵² Ibid, sections 32-40 and 85-87

¹⁵³ 2004) 7 NWLR (pt. 871) 116 at 154-155

3.5 PROCEDURE FOR NOMINATION BY INEC

INEC spells out guidelines for party primaries before every election as the regulatory body for political parties. In *Uba v Ukachukwu*¹⁵⁴ the Court held that the responsibility of INEC and its officers during any election is to ensure that all parties comply with the requirement of the law on the election. In *Dr. Chris Nwachukwu Ngige v Mr. Peter Obi & 4 ors*¹⁵⁵, Adekeye JCA held that the conduct of election in Nigeria by force of law is the primary responsibility of INEC. This responsibility starts with the registration of voters' sequel to the registration of political parties. It has the sole responsibility to organize, conduct and supervise all the elections and matters pertaining to elections into all the elective offices provided in the Constitution of the Federal Republic of Nigeria...by its enormous and onerous duties, the Commission, in the eye of the law must be an impartial body. The court reiterated that the issue of nomination and sponsorship of candidate for an election remains the exclusive preserve of the political party concerned. INEC through its Chairman (former) Prof. Attahiru Jega, on the 27th day of October 2014 spelt out the regulation to govern the 2014 party primaries for a successful conduct of political party primaries, which he said is based not only on the legal requirements for the conduct of party primaries but outlines the democratic principles that should govern the process of nomination of candidates by political parties.

The INEC guideline is in line with 1999 Constitution (As Amended) and the provisions of Electoral Act 2010(As Amended) as it concerns nomination of candidates and the holding of primaries. The guideline applies to all elective positions contested for in Nigeria. It is meant to ensure compliance with the legal process of selection of candidates and the conduct of free, fair and transparent primaries by all political parties.

¹⁵⁴ (2004) 10 NWLR(pt. 8) p. 260 38

¹⁵⁵ (2006) All FWLR (pt. 330) at 1169 - 1170, paras. D-G

The guideline reiterates that political parties must conduct primaries, wherein all eligible members of the party must be given equal opportunity to participate in the primaries of the party for the purpose of selecting candidates for elective positions. By the INEC guideline, a political party conducting primaries must first and foremost ensure that aspirants for elective office who are approved to participate in its primaries are eligible to contest in elections as stipulated under the 1999 Constitution (As Amended). The guideline cautioned Political parties not to create rules or impose conditions or set high expression of interest or nomination fees that could exclude aspirants on the basis of sex, religion, and ethnicity, circumstance of birth or wealth. This is in order to give every member the right to vote and be voted for. Where high fees are fixed for expression of interest form to be nominated, the Commission may of its own motion or based on a complaint made by any member of a political party, rule that the said fees is excessive, unreasonable or in violation of these regulations and may require that such rules, conditions or fees be changed or reduced.

Even though Political parties are allowed to set their own rules and guidelines, INEC stipulates that no political party shall set criteria or conditions to pre-qualify an aspirant to contest in its primaries as candidate except such conditions are in line with the 1999 Constitution, the Electoral Act 2010(As Amended), the Constitution of the party, as approved by the Commission, as well as the regulations, guidelines and directives of the Commission. Where a member of Political party member complains that any of the conditions or criteria imposed by a political party to pre-qualify an aspirant to contest its primaries is in violation of the 1999 Constitution (as amended), the Electoral Act 2010(As Amended) or the constitution of the party as approved, or the regulations, guidelines and directives of the Commission, the party shall be required to sets aside the said condition or criteria to comply with the law.

All political parties must comply with the provisions of the Electoral Act 2010(As Amended) that requires that primaries be held by direct or indirect primaries, in

addition to complying with all regulations, guidelines and directives of the Commission.

In line with the provisions of the Electoral Act, the INEC emphasized that Political parties must submit by written communication to the Headquarters of the Commission and no later than 21 days to the date of its primaries, venue and time. The method of primaries a party intends to adopt whether direct or indirect primaries must also be communicated duly signed by the National Chairman of a political party.

Notices of party primaries shall be accompanied by the following documents:

- a) List of aspirants seeking nomination to contest the relevant elective positions;
- b) List of members of the election committee of the party conducting the primaries;
- c) List of delegates for the primaries;
- d) Fifty copies of the guidelines or rules issued by the party for the conduct of the primaries, congresses or conventions; and
- e) Ten (10) copies of the Constitution of the party certified by the Commission
- f) Any other document that the Commission may from time to time determine.
- g) List of Elected Candidates and their scores (Result Sheets)

A political party that intends to organize its primaries by direct method must ensure that it maintains a proper and duly certified membership register, which must be available for inspection by the Commission, the aspirants and any party member that requests same. Where a Political party intends to organize its primaries by indirect method must provide to the Commission no later than seven days to the date of the primaries, the list of electors that will form the delegates for every elective position.

To ensure transparency, the INEC guideline provides that the primaries of the political parties must be held in the presence of officials of the Commission who will make a determination that the primaries have been conducted in compliance with the provisions of the Nigerian Constitution, the Electoral Act 2010(As Amended) and its regulation.

It is a mandatory the Electoral provision that primaries must be conducted in the presence of INEC officials, and can only reschedule party primaries after due communication to INEC. Therefore, the 2014 guideline reemphasized that conduct of primaries shall commence at the time and venue provided in the relevant notice communicated to the Commission by a political party and rescheduling of any scheduled primary shall be by a written communication to the Commission not later than seven (7) days to the new date, clearly stating the reasons for rescheduling, the new date and the venue.

To avoid substitution of candidates, INEC makes it mandatory that the Chairman and/or Secretary of the relevant party Electoral Committee conducting a primary shall provide a signed copy of the result sheet for the primary immediately after a result is declared. The result sheet shall be handed over to the Commission's Monitoring Team at the venue of the primary. This procedure must be done to avoid subsequent nomination.

Where the Commission is not satisfied that a political party has carried out its primaries in accordance with the 1999 Constitution (as amended), Electoral Act 2010(As Amended) or its own rules and regulations or in accordance with the regulations, guidelines and directives of the Commission, the Commission shall notify the said political party of its observation within seven (7) days of the conduct of the primaries. Where a political party is notified of any irregularity, it shall take steps to comply with all requirements for proper primaries.

However, despite these guidelines, and the observations made by INEC, nominated candidates are still substituted at will by Political parties.

3.5.1 THE ROLE OF INEC IN NOMINATION PROCEDURE

The procedure for nomination of candidates is a three-stage process. The parties inform INEC of their desire to hold primaries, congresses or conventions on a specific date, time and location, INEC responds and sends monitors to verify that the process corresponds to the laid down rules from the aforementioned sources and finally, INEC officially receives the names of successful candidates from the parties. After nomination of candidates, they are screened, list of candidates submitted to INEC and finally those names are published by INEC.

Sec 30(1) provides that; “The Commission shall, not later than 90 days before the day appointed for the election under this Act, publish a notice in each state of the Federation and the Federal Capital Territory-Stating the date of the election and appointing the place at which nomination papers are to be delivered.

(2) The notice shall be published in each constituency in respect of which an election is to be held”.

In the case of a by-election, the Commission shall, not later than 14 days before the date appointed for the election, publish a notice stating the date of the election.

Sec 31(1) provides that every political party shall not later than 60 days before the date appointed for the general election under the provisions of this Act, submit to the Commission in the prescribed forms the list of the candidate the party proposes to sponsor at the election.

These numbers of days are for the Commission to scrutinize the names of candidates submitted to it. The commission witnesses the nomination process, the copy of the result sheet signed in the presence of its members.

Nomination does not end until INEC publishes the list of persons who stand nominated. The commission is expected to publish, a statement of the full names and address of all candidates standing nominated at least 30 days before the day of the election by displaying at the relevant office or offices of the Commission and on the

Commission's website¹⁵⁶. However, failure of INEC to publish a candidate's name who satisfies all the requirement will not have his name invalidated. In *Barrister Vincent Osakwe v Independent National Electoral Commission (INEC) & ors*¹⁵⁷, the Court held that a party nomination list even if not published is not a substantial noncompliance. The question is then raised, that at what point are the names of successful candidates substituted. Where a candidate withdraws, he does so by notice in writing signed by him and delivered by himself to the political party that nominated him for the election. The political party conveys such withdrawal to the Commission no later than 45 days to the election. This means that where there was coercion to withdraw, or the intention to withdraw was influenced by some party members in order to substitute him, INEC has enough days before the election to make all necessary enquiries.

The Act provides for incidences where after the time for the delivery of the nomination paper and before the commencement of the poll, a nominated candidate dies. It provides that the chief national Electoral Commissioner or the Resident Electoral Commissioner shall, being satisfied of the fact of the death, countermand the poll in which the deceased candidate was to participate and the commission shall appoint some other convenient date for the election within 14 days.¹⁵⁸ However, if at the close of nomination there is no candidate validly nominated, the Commission shall extend the time for nomination and fix a new date for the election.¹⁵⁹ If after the latest time for the delivery of nomination papers and the withdrawal of candidates for an

¹⁵⁶ Section 34 Electoral Act 2010(As Amended)

¹⁵⁷ (2005) 13 NWLR (pt.942)442 at 473-474, CA

¹⁵⁸ Section Sec 36 (1) Electoral Act 2010(As Amended)

¹⁵⁹ Ibid, section 38(3) and (4)

election under the Act, more than one person remains validly nominated, a poll shall be taken.¹⁶⁰

Even where INEC is not given prior notice of convention or congress by a political party, the Commission may, with or without prior notice to the political party monitor and attend any convention, congress, conference or meeting which is convened by a political party for the purpose of electing members of its executive committees or other governing bodies.¹⁶¹ INEC has the statutory power to monitor and keep records of the activities of all the registered political parties. It also has the right to direct its enquiry to the Chairman or secretary of the political party at the National, State, Local Government Area council or ward level as the case may be.

The Electoral Act 2010(as amended) specifically provides that the Commission may seek information or clarification from any registered Political party in connection with any activity of the Political party which may be contrary to the provisions of the Constitution or any other Law, guidelines, rules or regulations made pursuant to an Act of the National Assembly.¹⁶²

After nomination and a candidate has been screened and cleared to contest an election, a political party to which a candidate belongs cannot stop him from contesting. His sponsorship ceases to be a matter within a Political party to determine. False information to a political party or INEC is not enough to disqualify a candidate. An applicant must swear an affidavit and attach to the documents submitted. However, if after nominations and screening of candidates, any person has reason to believe that the information given by a candidate is false, he may petition the Commission or file a suit at the High Court of a State or the Federal High Court against such candidate for a declaration that information is false. There must be a

¹⁶⁰ Ibid, section 34,39 38

¹⁶¹ Ibid, section 85(1)

¹⁶² Ibid, section 86(1) and (2)

court order expressly disqualifying the candidate. The Electoral Act 2010(as amended) stipulates that it is the court that can entertain such a matter and that should be done before the election is held. *Nagogo v CPC*¹⁶³

3.6 CONCLUSION

The success of election depends largely on the quality of prior arrangements and preparations of INEC and political parties. In order to have a free and fair election, guidelines and procedure for nomination of candidates are set out by Political parties and INEC for all elective offices.

However, unlike the general approach in the chapter that precedes this, this chapter specifically narrowed down on the legal procedures for nomination of candidates by Political parties for an election.

The issue of nomination of candidates by political parties for an election as shown in this chapter forms the core and accounts for most of the pre-election disputes or matters. The chapter dealt with the procedure for nomination of candidates to the elective positions and the roles of Political parties and INEC in the process. The specific provisions on the institutional and legal framework for the nomination of candidates identified in the previous chapter were discussed elaborately in this chapter and decided cases on the interpretations of relevant provisions of the Law on the subject were also reviewed and analyzed.

The chapter looked at the procedure for nomination of candidates under the Electoral Act 2010(As Amended), the procedure under some selected Political parties, and the guidelines stipulated by INEC.

In the end, it was the finding in this chapter that the procedure for the nomination of candidates by Political parties for an election is a process that involves both the Political parties and INEC as a body and it is the noncompliance with the laid down

¹⁶³ (2014) SC 589/2013

procedures that has resulted in the multitudes of pre-election matters. This will form the basis of the discussion to be undertaken in the next chapter.

CHAPTER FOUR

JUDICIAL ATTITUDE ON NOMINATION OF CANDIDATES

4.1 INTRODUCTION

Election is seen as the selection of a person or persons for office through ballot and making choice between alternatives. While the electoral processes entail the method adopted in the

selection of persons for political offices. In this regard, no government can be regarded as democratic if the electoral process is marred by fraud or irregularities. For elections and electoral process to be considered as fair it must have some basic structures, which include statutory provisions establishing the electoral bodies, delineation of wards/constituencies, registration of political parties, registration of voters, screening of candidates, voting, counting of votes and importantly, providing avenues for settlement of disputed results¹⁶⁴. A key issue in intra-party democracy is the nomination process. Nomination of party's candidates is one of the sources of Electoral disputes. The Constitution does not only recognize the necessity for a viable party system, it makes it mandatory that only party members that are sponsored by the political party are qualified to contest elections to the elective offices in Nigeria. The Electoral Act is also explicit that where candidates are nominated, there should be no substitution except as laid down by the law.

Most of the disputes before Courts on pre-election matters are issues of nomination and substitution of candidates to different elective offices. Most of the pre-elections disputes will border on the invalid nomination and substitution. This chapter discusses on the judicial attitude on pre-election matters on nomination of candidates.

¹⁶⁴ Nachana'a A., Yusuf A.M., & Auwalu M., Elections, Electoral Process and the Challenges of Democratization in Nigeria's Fourth Republic, Research on Humanities and Social Sciences www.ijste.org Vol.4, 2014

4.2 PRE- ELECTION MATTERS

Pre – election matters are incidents that happened before the conduct of the main general election. Pre-election matters deal with those issues that happen before the holding of the actual election. Issues like the validity or otherwise of the nomination of a candidate and the substitution of the name of such candidate submitted to INEC which are pre-election matters can lead to disputes. As the name implies, they are matters which originated or occurred before the conduct of an election or poll. In *Sulaiman Usman & anor v Alhaji Muhammad Maccido & ors*¹⁶⁵ the court in trying to define pre and post election matters Per Oredola, J.C.A held that “the dictionary meaning of “pre” is before while that of “post” is after”. He further opined that “it is obvious and clear that issues of nomination, withdrawal and or substitution of candidate are all matters or incidents which took place before the election proper.”

In the instant case, the issue of on whom lies the jurisdiction over pre-election matters or disputes was raised. It was held that issues bordering on nomination, substitution and or withdrawal of candidates are pre- election matters. They are outside the jurisdiction of election tribunals, but to be heard in either the Federal or State High Courts. In *Kalu Igu Uduma v Prince Arua Arunsi & 14 ors*¹⁶⁶, on what constitutes pre-election matter, it was held that the issues of disqualification, nomination, substitution and sponsorship of candidates for an election precede elections and are therefore pre-election matters. Thus, the issue of nomination of a candidate and sundry violations of provisions of the Electoral Act by candidates or their party or the Electoral body which violation occur before the day of election are purely pre-election matters.

¹⁶⁵ (2009) LPELR CA/K/EP/NA70/70

¹⁶⁶ (2012) 7 NWLR(pt. 55) p. 79

Where a candidate is aggrieved on any of the conduct of the party not in line with the provisions of the Electoral Act, party Constitution or the Constitution of the Federal Republic of Nigeria, Section 87 (9) of the 2010 Electoral Act(As Amended) gives right to seek redress in the in the law Court. The Section provides that;

notwithstanding the provisions of the Act or rule of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or High Court of a State, for redress.

This section gives an individual the right to seek redress in court whenever an aspirant or a candidate sees that a political party did not follow its guideline in the nomination of candidate . Pre-election matters consist of disputes arising from when aspirants are nominated and/or sponsored, to when primaries are conducted and names submitted to INEC. Courts dispose of a matter where they give interpretation as to non-compliance with the party guidelines and interpretation as to non-compliance with the provisions of the Electoral Act, 2010 (As Amended). In *Ombugadu v CPC*¹⁶⁷ on the issue of who can institute pre-election action to complain against nomination of political party's candidate to election, it was held that by virtue of S. 87 (9) of the Electoral Act, 2010, it is an "aspirant" not a "candidate" who can institute a pre-election suit to complain that any of the provisions of the Electoral Act and the guide lines of his political party had not been complied with in the selection or nomination of the party candidate. Members may be aggrieved with the way the party fund is being run, selection of executive members, or nomination of candidates.

¹⁶⁷ (2013) 3 NWLR(pt. 39) p. 71

4.3 JURISDICTION OF COURTS OVER PRE-ELECTION DISPUTES

Jurisdiction is the authority which a court must possess to decide matters that are litigated before it. The Courts regard pre-election matters as matters which the Courts see as not having jurisdiction to litigate upon. In *All Progressive Grand Alliance (APGA) v Senator Christiana N.D. Anyanwu & 2 ors*¹⁶⁸ The 2nd Respondent instituted an action under originating summons contending that the 1st Respondent's name ought not to have been submitted to the 3rd respondent as the appellant's senatorial candidate for the Imo East Senatorial Zone Election in the 2011 general election because at the time of the primary election which took place on 14th January 2011, the 1st Respondent was not a member of the Appellant but an active member of another party, P.D.P.

The trial Court struck out the Appellant's originating summons on the grounds that it lacked jurisdiction to entertain same as the suit was contentious in nature and since nothing would be gained by ordering pleadings since the general elections were scheduled to take place in 7days' time. Aggrieved, the 1st respondent appealed to Court of Appeal while the 2nd respondent also cross-appealed. The Court of appeal upheld the cross-appeal and dismissed the appeal of the Appellant and remitted the case to the trial Court for retrial. Dissatisfied, the appellant further appealed to Supreme Court. The Supreme Court held that the jurisdiction of Courts in pre-election disputes as regards subject matter, or person joined or kind of relief sought is important before a Court can assume jurisdiction. Courts that have jurisdiction on matter brought to it have the power of enforcement. Enforcement refers to the act of causing the decision of the court or tribunal to take effect or to compel obedience to it. Enforcement of an Electoral law is about giving effect to or ensuring compliance with the rules and regulations governing the conducts of elections, pre during and post. It

¹⁶⁸ [2014] SC. 20/2013

refers also to matters relating to registration of political parties, regulating and monitoring the behaviors or activities of both political parties and politicians as well as other electorates before, during and post-election periods in order to ensure a free and fair elections in the interest of democratic governance and respect for popular will.

The Supreme Court held that where the court lacks jurisdiction to entertain a cause or matter, the entire process, no matter how well conducted, is an exercise in futility, for the proceedings are a nullity ab initio.

Jurisdiction is so fundamental that once the Court's jurisdiction to hear a matter is challenged, it must be dealt with and resolved first before any other step in the proceedings. It is because it is so fundamental that it can be raised at any time, in any manner and at any stage of the proceedings.

Jurisdiction can also be defined as the authority which a court has to decide matters which are litigated before it or to take cognizance of matters presented in a formal way of its decision. The limits to adjudicate on a pre-election matter is imposed by the Constitution, Statute, or Commission and may be restricted by similar means.¹⁶⁹ The ordinary Courts in Nigeria have unlimited jurisdiction to entertain pre-election matters. These terminate at the Supreme Court.

The jurisdiction of Courts to entertain pre-election disputes has been a continuous contentious issue in our courts. In *All progressive grand Alliance (APGA) v Senator Christiana N.D Anyanwu & 2 ors*¹⁷⁰, Olatokunbo Kekere Ekun JSC on whether the court will be involved on membership of domestic affair of party held that ;

¹⁶⁹ Onamade P.A., Advocacy in Election Petition, Philade Co. Ltd.Lagos,2007. p.211

¹⁷⁰ (2014) SC 201/ 2013

“The law is by now well settled that jurisdiction is the lifeblood of any adjudication and where it is lacking it would render any proceedings, no matter how well conducted, liable to be set aside for being a nullity.”

Jurisdiction is so fundamental that once the court’s jurisdiction to hear a matter is challenged, it must be dealt with and resolved first before any other step in the proceedings. It is because it is so fundamental that it can be raised at any time, in any manner and at any stage of the proceedings...there is a plethora of decision of this court to the effect that membership of a political is the domestic affair of the party concerned and the court will not be involved in deciding who members of a political party are. He went to say that it is the responsibility of political parties to determine who its members are relying on the case of *Onouha v Okafor*.

4.4 RIGHTS OF AN ELECTORAL CANDIDATE

Political party membership is a must before an aspirant or candidate can approach the Court. Apart from membership, an interest must be shown to contest in the election. The right of candidate to seek redress in the Court lies in Section 87(9) 2010(As Amended). For emphasis, the Section provides;

Notwithstanding the provisions of the Act or rules of a Political party , an aspirant who complains that any of the provisions of this Act and the guidelines of a Political party has not been complied with in the selection or nomination of a candidate of a Political party for election, may apply to the Federal High Court or the High Court of a State or the Federal Capital Territory , for redress.

In *Nagogo v CPC*¹⁷¹ Per Chukwuma –Eneh, JSC stated that a member of a political party can only challenge party’s choice of candidate for an elective office effectively

¹⁷¹ (2014) SC 589/2013

if he is an aspirant in the party's primaries and thus brings himself within the definition of an aspiration as provided by section 87(9) of the Electoral Act 2010. He must have contested in the primaries.

In *Nicholas Chukwujekwu Ukachukwu v Peoples Democratic Party & 3 ors*¹⁷² the Supreme Court on the justiciable right of an Electoral candidate held relying on – Section 87(9) of the Electoral Act 2010(As Amended) held that the literal interpretation of Section 87 (9) of the Electoral Act is that an aspirant has a right to complain where the provisions of the Electoral Act and or the guidelines of a political party have not been complied with in the selection or nomination of a candidate for election. He may exercise the right to seek redress notwithstanding the provisions of the said Act or rules of a political party.

In other words no provision of the Electoral Act or any rule of a political party can take away this right. However, the provision is not at large. The complainant must be an aspirant who participated in the primary that produced the sponsored candidate. The extent of the right of a candidate is where there is a conclusive primary and a winner emerged. The winner has the right to challenge his political party where his name is not submitted to INEC for whatever reason. Any person preparing to, or seeking to contest election, must be an aspirant, must first have been nominated by members of his political party, and presented by his political party to the electoral body. An aspirant cannot sue where he is not sponsored by his political party. In *Nicholas Chukwujekwu Ukachukwu v Peoples Democratic Party & 3 ors*¹⁷³, Kekere Ekun JSC held that ;“... the complainant must be an aspirant who participated in the primary that produced the sponsored candidate”.

¹⁷² (2013)4 NWLR

¹⁷³ *ibid*

4.5 PRE-ELECTION DISPUTES WITHIN THE POWERS OF COURTS

Even though a candidate has right to seek redress in the Courts, issues bothering on nomination and sponsorship of candidates are intra party issues which courts normally entertain with caution. Pre-election disputes overtime have been regarded as non-justiciable or “Political Question”. The Black’s Law Dictionary¹⁷⁴ defines Political Questions as: “Questions of which courts will refuse to take cognizance, or to decide, on account of their purely political character or because their determination would involve an encroachment upon the executive or legislative powers in the law courts.”

The Courts limit their powers to substitution of candidates within political parties. Disputes in political parties brought before the Court are seen as intra-party issues and therefore non-justiciable. The courts see such issues as an invitation to dabble into politics issues. The Court does not interfere on how a political party arrives at the list of its candidates forwarded to INEC . It has been categorically held in so many cases that political party issues on membership and sponsorship of candidates are within the powers of political parties. Failure of Political parties to act on the result of the primaries already conducted is what may be enforceable in the court. The court will however, come in only when the provisions of specific statutes have to be interpreted or not complied with.

In *Senator Christiana N.D Anyanwu v Hon. Independence Chiedoziem Ogunewe & 2 ors*¹⁷⁵ Kekere-Ekun, JSC held that; “It is the prerogative of every political party to determine who its members are. The courts have no business delving into the issue as clearly stated in the authorities of *Onouha v Okafor*.”

¹⁷⁴ Black’s Law Dictionary, H.C Black, West Publishing Co., USA 1979, 9th edition, p.1277

¹⁷⁵ (2014) SC.20/2013

In *Tukur v Uba*¹⁷⁶ on whether court can enquire into a political party choice of candidate for an election, the Court held that a political party which is sponsoring candidates for an election is the proper person or body to determine which of the aspirants amongst its members it has cleared for the primaries and general election.

As long as the guidelines and Constitution of political party are not violated or breached, the Court has no power to question the choice of party's candidate presented for election. The Court acting within its narrowed jurisdiction as conferred on it under S. 87 (9) of the Electoral Act 2010(As Amended) can prevent a political party from contravening its Constitution and guidelines in the sponsorship of its candidate for elective offices hence the intervention of the court to preclude it from doing so in this matter against a successful aspirant at the party primaries.

4.5.1 THE BASIS FOR COURTS NOT ENTERTAINING PRE-ELECTION DISPUTES

The Courts have held severally that intra-party disputes should be resolved by political parties themselves. In *Emeka v Okadigbo*¹⁷⁷, Per Rhodes Vivour JSC stated the reason why Courts do not entertain pre-election disputes thus: "...the reason is simple the court will never allow a political party to act arbitrarily or as it likes. A political party must obey its Constitution"

In *Maduemezia v Uwaje*¹⁷⁸, the Court held that it is not within the province and jurisdiction of the Courts to interfere with matters which concern the running of the internal affairs of political parties. However, the reason given by the Court in *Abdulkadir v Mamma*¹⁷⁹, for not meddling in the affairs of political parties is that, if

¹⁷⁶ (2013)4 NWLR(pt.7)

¹⁷⁷ (2012)18 NWLR (pt.1316)p.55- 114 lines 15-30

¹⁷⁸ (2015) LPER-24542(CA) Suit No: CA/B/434/2013

¹⁷⁹ (2003) 14 NWLR (pt. 836) 1

Courts interfere in intra-party disputes, then it means they are managing the affairs of political parties for them.

In, *Akpan v Bob*¹⁸⁰ the Court held that the question of nomination and sponsoring of candidates by a political party is purely within the domestic affairs of a political party which the Court cannot adjudicate on. In *Emenike v PDP*¹⁸¹, Nobodo J.C.A stated that :

The courts should always be reluctant to delve into the issue of who is a candidate of a political party at any election. The reason is obvious; the candidature of a member of a party in a true democratic system is the domestic affair of the party. The relevant statutes have limited the extent of the intervention of the courts in domestic affairs of the party.

He further elaborated that;

The courts have no jurisdiction to nominate, appoint or anoint a candidate for a political party or compel a political party to sponsor a candidate outside the ambit of the powers conferred on the court as provided under Section 87 of the Electoral Act 2010(As Amended)...Therefore, the court's jurisdiction in relation to complaints arising from primary election of political parties is limited to whether the primary election conducted by the party for nomination of a candidate was conducted in line with the provisions in the Electoral Act 2010, (As Amended) the Party Constitution and the Party guideline.

¹⁸⁰ (2010) 17 NWLR(pt.1223) 55,P. 44, paras. B-E

¹⁸¹ (2012) 12 NWLR(pt.1315) 556

In *Ehinlawo v Oke*¹⁸² the Court stated that it will not normally interfere with how a political party arrives at the list of its candidates forwarded to INEC as the chosen candidate.

This may be because a political party can have a number of reasons not to submit a candidate's name, or substitute him, or it may have a number of factors it will take into consideration before arriving at its final list to be sent to INEC.

4.6 JUDICIAL APPROACH TO INTRA-PARTY DISPUTES

Even though a candidate has a right to seek redress, the right of a candidate in Court is limited on when Courts have jurisdiction and when it can interfere in political party issues or intra-party disputes. This principle of political question and Courts not interfering in issues of political parties was laid in *Onouha v Okafor*¹⁸³. The Supreme Court developed this principle on the United States Supreme Court decision in *Baker v Carr*¹⁸⁴, where the issue before the Court was whether the Court has the power to review the decision of a political party dealing with nomination and sponsorship of candidate for election. The 1979 Constitution of the Federal Republic of Nigeria was modeled after the United States Constitution¹⁸⁵. However, by virtue of the 1979 Constitution, and the Electoral Act 1982, the power and right to nominate and sponsor a candidate to an Election are vested in a political party.

In *Onouha's* case, the plaintiff together with other members of the party including the third defendant contested the primary election of the Owerri Senatorial District, Imo

¹⁸² (2008) All FWLR (pt.442) p.1007, at 204, paras. F-H

¹⁸³ (1983) SCNLR 244

¹⁸⁴ 369 US 186 (1962).

¹⁸⁵ Nwauche E., Is the End Near for the Political Question Doctrine in Nigeria? Being a draft paper presented at African Network of Constitutional Law conference on Fostering Constitutionalism in Africa, Nairobi, 18-21 April, 2007.

State of Nigeria under Nigerian Peoples' Party after paying the required nonrefundable fee.

It was the contention of the appellant that he went through the party's primary and was elected as NPP candidate for his senatorial district, and was declared the winner since he had the highest number of votes. The third defendant alleged irregularities in the nomination process. A petition was written as a result of which his name was illegally substituted by his political party for that of the respondent. He therefore approached the court to be reinstated as the party's candidate. A panel was set up and all the parties were heard. The party resolved the issue in favor of the third defendant who didn't have the highest number of votes. The plaintiff brought an action asking the Court to nullify the Panel's decision and declare him the valid candidate and also sought an injunction restraining the party from submitting the name of the third defendant or any other name to FEDECO (Federal Electoral Commission). The lower Court granted the claims of the plaintiff. However, on Appeal, the Court of Appeal set aside the decision of the High Court and dismissed the claims on the ground that the matter was not subject to judicial review as selection of candidate for sponsorship was the prerogative of the political parties, and the decision of the party was binding on the members. The Supreme Court on appeal also affirmed the decision of the Court of Appeal on the ground that the matter is a political question and not subject to judicial review. This case lay precedence in the Courts that political party issues are domestic affairs of the party. However, this restriction of the court's power of review during the second republic (1979-1983) applied in impeachment proceedings, political party primaries and the internal affairs of the legislature¹⁸⁶.

¹⁸⁶ *ibid*

In *Okoli v Mbadiwe*¹⁸⁷ the plaintiff was nominated to represent the Akokwa/Arondizogu Constituency for the National Party of Nigeria (NPN). However, the Constitution of NPN allowed the National Executive Committee (NEC) of the party to depart from the rules and regulations of the party provided such departure was in the interest of the party. The National Executive Committee submitted the name of the defendant to Federal Electoral Commission (FEDECO) as its candidate instead of the plaintiff who was duly nominated and elected at the primary. The plaintiff sued and the Court declined jurisdiction on the ground that the question before it was a political one as it was not within the powers of the Court to choose a candidate for the party.

The attitude of Courts however changed in *Rimi & anor v Aminu Kano*¹⁸⁸ which was on a pre-election issue within the political party. The Court interfered with the internal affairs of the Peoples 'Redemption Party by nullifying the expulsion of two members from the party which was before it. Two members were expelled during the party's meeting for disobeying the party's instruction which was contrary to the provision of the party's Constitution which provides that expulsion could only be effected at the annual Convention of the party.

The doctrine was used religiously in the second republic in impeachment cases and other internal affairs of the Legislature. Courts in the second Republic in dealing with political questions used two approaches, either the restrictive or permissive approach. The restrictive approach was the most used. However, where the restrictive methodology is adopted in the interpretation of what is justiciable, the court would often end up finding in favor of political questions and against justiciability. Where the permissive approach was used, the court was always liberal in its interpretation of what is justiciable, and where this is the case, the end result is often that the court

¹⁸⁷ (1985)6 NCLR 742

¹⁸⁸ (1982) 3 N.C.L.R 478

would assume jurisdiction and deny the applicability of the “political questions” doctrine. While the court was always willing to intervene and apply the permissive theory, the court was very cautious and hesitant to intervene in the restrictive theory.

¹⁸⁹ When a democratically elected Government was sworn in 1999, pre-election disputes still continued and the courts on intra party dispute either decided tilting towards the permissive approach or back to the principle in *Onouha’s* case.

The principle in *Onouha’s* case became firmly established in *Dalhatu v Turaki*¹⁹⁰, where two primary Elections were held. The All Nigeria People's Party (ANPP) scheduled all its primary elections to hold on the 3rd day of January, 2003. Primary elections were to hold in Dutse, Jigawa State Capital, but screening of candidates and the primary election was held in Kano. The 1st defendant did not take part, only the appellant Bashir Mohammed Dalhatu did. He was declared the winner by the committee. However, another primary election was conducted in Dutse, in which the 1st defendant participated and the appellant did not. The result of the election was released to the ANPP by the chairman of the election committee. The ANPP recognized the same and duly announced the 1st defendant as the winner and issued him a certificate of such recognition on the 7th day of January, 2003. The appellant filed an action in the High Court of the Federal Capital Territory Abuja, for a declaration that the return was unconstitutional, and an injunction restraining the 1st respondent from interfering with the rights of the plaintiff. The learned trial Judge granted the prayers of the appellant and ignored the principle in the case of *Onouha v Okafor* that was cited to him by the respondent. The High Court held in favor of the plaintiff and advised the Supreme Court to re-amend its position on the internal affairs

¹⁸⁹ Wahab O.E., Justiciability Theory Versus Political Question Doctrine: Challenges of the Nigerian Judiciary in the Determination of Electoral and other Related Cases, *The Journal Jurisprudence*.

¹⁹⁰ (2003) 15 NWLR (pt. 843) 310

of the political parties. The Court of appeal allowed the appeal against the judgment of the lower Court.

The plaintiff's suit was struck out and dismissed by the Supreme Court. The Court was of the view that a Court of Law has no jurisdiction on which candidate a political party should nominate or sponsor for election. The exercise of this right is the domestic affair of the party guided by its Constitution. Since there are no criteria or yardstick to determine which candidate a political party ought to choose, the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction.

The candidate a political party will sponsor is more in nature of a political question which the Courts are not qualified to deliberate upon and answer. If a Court could do this, it would in effect be managing the political party for the members thereof. The Court in trying to justify the rationale for the principle of law that court cannot be involved in the domestic affairs of the political party was of the firm view that since persons have freely given consent to be bound by the rules and regulation of the political party, they should be left alone to be governed by such rules and regulations. In other words, persons have freely mortgaged their consciences to a situation, and a court of law should not intervene ¹⁹¹.

The decisions in *Onouha v Okafor*, and *Dalhatu v Turaki* established the following principles;

1. That the Courts have no jurisdiction to determine the right candidate of a political party between two or more contending aspirants, or the winner of a primary election, or who should be sponsored.

¹⁹¹ Shamrahayu, A.A. and A.O. Sambo, Internal Affairs of Political Parties and Judicial Review: An Expository Study of the Experience in Nigeria and Malaysia, Journal of Applied Sciences Research, 7(13): 2257-2265, 2011

2. The domestic affairs of political parties do not confer legal rights on members and members cannot challenge political parties over their decisions in their internal affairs and,

3. Matter within political parties on nomination or substitutions of candidates are termed pre-elections disputes and are totally un justiciable in the Court¹⁹²

Under the Electoral Act 2002, political parties had the liberty to change its candidate at will for Election to any particular office. Nobody had the power including INEC and the Courts to inquire into whether there were reasons or not for the for the substitution ¹⁹³.The Act provides ¹⁹⁴ that any political party which wishes to change any of its candidates for election under the Act may signify its intention in writing to the commission not later than 30days to the date of the election. Political parties by this section could substitute names of its candidates already submitted to INEC.

This section and other statutes that regulated Elections before 2002 did not help intra party disputes because of its sweeping nature¹⁹⁵.The powers given to political parties was grossly abused, as parties changed names of candidates even on the eve of general elections.¹⁹⁶ An unfair opportunity was given to political parties to selfishly impose candidates for elective positions. All that a political party needed to do was to signify its intention to substitute a candidate at INEC. Political parties relied on this provision to pick candidates at will. This led to series of intra party disputes either on membership, substitution or nominations and cases where decided in line with the provision of sec 23 of the Electoral Act 2002.

¹⁹² Udom U.O., Nigeria's Electoral Laws Issues and Matters Arising, First Edition, Princeton & Associates Publishing Co. Ltd,Lagos,2014. p. 96

¹⁹³ Aduloju&Okobote, Impact of Judicial Activism on Electoral Laws in Nigeria, Pensbury publishers, Abuja,2013,p.15

¹⁹⁴ Sec 23 Electoral Act 2002.

¹⁹⁵ For example Decree No.18 of 1992

¹⁹⁶ op cit n.29 p.112

In *Mohammed Hassan Rimi v INEC & ors*¹⁹⁷, Mohammed Rimi who contested under the platform of PDP to the seat of National assembly in Lokoja won the primaries but his name was substituted at INEC on the eve of the Election. The court of Appeal though observed the injustice, held it cannot assume jurisdiction because it is an intra-party dispute. The Court stated;

The attitude of the Court is to restrain itself from imposing an Election candidate in a party because the choice of an election candidate of a political party is purely within the domestic affairs of the party. In the instant case, the choice of the 1st Respondent as the election candidate of the Peoples Democratic Party was purely the internal affair of the party and the Court of Appeal would not interfere therewith...

The actions of political parties led to several agitations for a shift by the judges from the decision in *Onouha v Okafor*¹⁹⁸.

In *Nwachukwu v Mr. Peter Obi*¹⁹⁹, the Court observed the need for an amendment to Sec 22 of the Electoral Act (2002). These agitations led to the enactment of Section 34 of the 2006 Electoral Act. Section 34 of the 2006 Electoral Act provides that;

- (1) "A political party intending to change any of its candidates shall inform the commission of such change in writing not later than 60 days to the election
- (2) Any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons.
- (3) Except in the case of death there shall be no substitution or replacement of any candidate whatsoever after the date of referred to in subsection (1) of this Section"

¹⁹⁷ (2005)6 NWLR(pt. 920) p.56

¹⁹⁸ (1983)SCNLR 244

¹⁹⁹ (2006) All FWLR(pt.330)p.1041 at paras D-G

The modification of this section led to the permissive approach in the Courts .Following these amendment of the Electoral Act, the Supreme Court in *Ugwu v Ararume*²⁰⁰, and *Amaechi v INEC*²⁰¹, held that intra party issues are justiciable.

In *Ugwu v Ararume*²⁰², the appellant emerged winner at the governorship primaries conducted by the People's Democratic Party for Imo State on the 14th of December 2006. The appellant at the contest scored 2,061 votes as against the 36 votes scored by the 2nd Respondent Engineer Charles Ugwu. The name of the appellant was forwarded to INEC by the PDP as the governorship candidate sponsored by PDP in compliance with the provisions of section 34(1) and (2) of the 2006 Electoral Act, on the 14th of December 2006. However, the party forwarded the name of Charles Ugwu to INEC who didn't have the highest votes at the primaries, as the candidate it was sponsoring for Imo State governorship in April 2007. The appellant's party said it submitted Egnr Ugwu's name in error.

The learned trial Judge, after taking the interlocutory matter of jurisdiction, threw out the 1st respondent's case. The judge stated that;

By the provision of Section 34 of the Electoral Act 2006, I find that a political party has the power to change its nominated candidate for another any time before 60 days to election. In its exercise of the power to change, it needs to inform the INEC in writing not in any prescribed form of the change. It will also give INEC cogent reason for the change which INEC should be able to verify. In the instant case, the 3rd Defendant submitted the name of the Plaintiff as its Governorship candidate, informed INEC of its change of candidate and gave INEC a reason for the change.

²⁰⁰ (2007) 12 NWLR (pt. 1048) p.367 at 507 paras A-B

²⁰¹ (2008) 33 NSCQ 332 at

²⁰² (2007)12 NWLR (pt.1048)367 at 507

It is left for INEC to verify the reason or not. But pursuant to all the above, I will say that the political party is within its powers to so change its candidate and have so done as far as the parties on record are concerned.

The Court of Appeal did not agree with the learned trial Judge. The court overturned the judgment of the learned trial Judge and allowed the appeal. Adekeye, JCA, said:

Moreover that pronouncement is not a judicial or judicious exercise of the discretion of the lower court in the circumstances of the case. I shall not hesitate to conclude that the learned trial judge failed to consider all the aspects of section 34(1) and (2) of the Electoral Act and same has not met the justice of this case. I hereby allow the appeal. Judgment of the lower court is hereby set aside.

The court dismissed the cross appeal. Dissatisfied, the appellants went to Supreme Court where they raised the following issues for determination:

1. Whether the decisions of the court in *Onouha v Okafor* (1983) 14 NSCC 494 and *Dalhatu v Turaki* (2003) 15 NWLR (Pt. 843) 310 on issues of nomination and sponsorship of candidate by a political party have been overtaken by the provisions of Section 34(1) (2) of the Electoral Act, 2006.
2. Whether the learned Justices of the Court of Appeal were right in holding that Section 34 of the Electoral Act, 2006 is justiciable.
3. Whether the learned Justices of the Court of Appeal were right in the interpretation of Section 34(1) (2) of the Electoral Act, 2006.

The 2nd appellant formulated the following issues for determination:

- (a) Whether the Court of Appeal was right when it held that the action before the trial Court being one of sponsorship and nomination of a candidate by a political party was justiciable, i.e. has section 34(1) (2) however interpreted

taken the issue of nomination and sponsorship of a candidate outside the Supreme Court decision in

- (a) *P. C. Onouha v R. B. K. Okafor*, 1983, SNLR p. 244.
- (b) *Dalhatu v. Turaki*, 2003 15 NWLR, pt. 843 p. 300, that courts do not have jurisdiction in pre-election disputes.

Learned counsel for the 1st appellant, Dr. Izinyon, SAN, submitted on Issue No. 1 that the Court of Appeal was wrong to have held that it was not a domestic affair of the 3rd respondent having scaled a purported nomination and sponsorship. He cited *Onouha v Okafor* (1983) 14 NSCC 494 and *Dalhatu v Turaki* (2003) 15 NWLR (Pt. 843) 310. He argued that section 34(1) can only become applicable and not a domestic affair of the party when the time allowed has elapsed. While passing its judgment, the Supreme Court per Christopher Mitchel Chukwuma-Eneh, J.S.C said the reason given by PDP that it substituted names in error is not a cogent reason nor verifiable reason. The Supreme therefore held that the provision of Section 34(1) and (2) of the Electoral Act 2006 makes pre-election disputes justiciable.

Similarly, In *Amaechi v INEC*²⁰³, Rotimi Chibuike Amaechi as a member of the Peoples' Democratic Party (PDP) contested the PDP primaries against seven other members of the PDP with the aim of becoming the governorship candidate of the PDP in the April 14, 2007 general elections in Rivers State. The eight contestants (Amaechi inclusive) competed for a total of 6,575 votes. Amaechi overwhelmingly scored 6,527 votes to emerge the winner of the primaries. Celestine Omehia was not one of the candidates at the PDP primaries. The PDP submitted Amaechi's name to the INEC as its governorship candidate. Subsequently, the PDP substituted Amaechi's name with that of Omehia without any cogent reason as required by section 34 of the Electoral Act 2006. The only reason given in the letter was simply that the name of

²⁰³ (2008) 33 NSCQ 332 at 585

Rotimi Amaechi was submitted in error. Amaechi promptly instituted an action at the Federal High Court Abuja on the 26th day of January 2007. His claim, inter alia, was for a declaration that the substitution of his name with that of Omehia as PDP candidate for the

April 14, 2007 governorship election in Rivers State was illegal, null and void and of no effect. The defense of the PDP for its action was basically that Amaechi's name was earlier submitted 'in error' without giving particulars of the purported error. It was this development that resulted in the final appeal to the Supreme Court.

After taking into consideration the applicable law and circumstances surrounding the case, the Supreme Court, came to the conclusion that 'error', which was canvassed by the PDP as a reason for substituting Amaechi with Omehia did not satisfy the requirement of section 34 of the Electoral Act 2006 and that the substitution was unconstitutional, null and void ab initio. According to the apex court while declaring the appellant as the legitimate governor of Rivers State, in the eye of the law, as at the 14th day of April 2007 when the gubernatorial election was conducted in Rivers State, Amaechi was the PDP's governorship candidate in the State.

The Supreme Court also held that inter party disputes are justiciable.

Section 34 of the 2006 Electoral Act only made substitution of candidates to be based on some stringent conditions. The reason for the substitution must be cogent and verifiable, and once the name of a candidate had been submitted to INEC, it doesn't matter how the candidate's name was submitted, as there was no longer room for substitution.

In *Ehinlawo v Oke*²⁰⁴, Per Onnoghen JSC stated that;

*I have to emphasize the point that section 34(2) seeks to protect
the right of sponsorship of a candidate whose name has been*

²⁰⁴ (2008) All FWLR(pt.442) p.1007 at 1052 paras D-F

submitted to the 3rd respondent (INEC) by the 2nd respondent as its candidate for any election irrespective of how he emerged as the candidate...It really does not matter how the name of the appellant got into the list of candidates...The name of the appellant might have gotten into that list by dubious means but that is not the issue before the Court. Once the party submitted the name of the appellant that is the end of the matter...

The case of *Ugwu v Ararume* and *Amaechi v INEC* became the locus classicus cases for wrongful substitution of candidates.

However, the Electoral Act 2006 was still amended as issues on substitution of candidate before the Courts became more stringent by the provisions of the amended sections of the Electoral Act 2010. Substitution of names was not allowed where names have already been submitted to INEC. The Courts entertain only issues on substitution where a Political Party violates its own guideline or Constitution.

4.7 DISTINCTION BETWEEN NOMINATION AND SUBSTITUTION OF CANDIDATES.

With the amendment of the Electoral Act 2010, political parties cannot substitute candidates.

Section 33 provides that ;”A political party shall not be allowed to change or substitute its candidate whose name has been submitted_pursuant to section 32 of this Act, except in the case of death or withdrawal by the candidate”. (Underlining mine)

Based on this section, the Courts made a distinction between issues on nomination, and issues on substitution of candidates. However, Courts only entertain issues of substitution and regard nomination issues as pre-election dispute not within the powers of the Court to adjudicate upon. While nominations are actions before the conduct of primaries, substitutions are events that happen after nominations and

names submitted to INEC. This however makes a distinction in the case of late prince Abubakar Audu of Kogi State in the Nov.2015 general elections. The bone of contention lies on substitution after his death, not on nomination. Despite the arguments in late Audu's case, section 181(1) of the 1999 Constitution(As Amended) envisages death before taking and subscribing to the oath of office.

However, the Courts consider issues of nomination as domestic and internal affair of the political party which is not justiciable in court. Thus the aggrieved party is left without a remedy.²⁰⁵

In *Etim v Obot*²⁰⁶, the Court held that Courts have no jurisdiction to question who the right candidate of a political is for an election once the party has nominated a candidate.

The exception to the rule has to do with substitution of a candidate already nominated and submitted to INEC, and that too must be done within the time frame provided in the Electoral Act, with cogent and verifiable reasons given.

4.7 SUBSTITUTION OF CANDIDATES BY POLITICAL PARTIES.

Substitution of candidates is the main issue of litigation in pre- election matters. It has been

the problem for lack of intra- party democracy. Unlike the situation in the past where Courts do not entertain pre-election disputes at all, and matters before the courts have either been dismissed or not heard by the courts because they are treated as domestic issues of political parties, Section 87(9) now allows Courts to entertain pre-election disputes where:

1. A candidate has participated in the primaries,

²⁰⁵ Okhaide I.P., Quest for internal party democracy in Nigeria: Amendment of Electoral Act 2010 as an albatross. International Journal of Peace and Development Studies Vol. 3(3), pp. 57-75, May 2012. Available online at <http://www.academicjournals.org/IJPDS>. Last visited March 20, 2015

²⁰⁶ (2010) 12 NWLR (pt.1207)

2. Emerged the winner in the primaries and
3. Must institute the action promptly.²⁰⁷

The question is whether the Courts have jurisdiction on nomination of candidates as pre-election disputes, since the Courts based on section 33 and 87(9) of the Electoral Act 2010(As Amended), only entertain disputes where there is substitution and not disputes on nomination of candidates. The Courts only entertain pre-election disputes where nominations have taken place, and names of candidates already submitted to INEC. Every other issue before the Courts outside substitution of names given to INEC is regarded as domestic affair of the political party. The conduct of nomination of candidates by political parties in Nigeria always ends up in litigation before the Courts because of substitution. Despite the amendments to the Electoral Act on substitution of candidates, political parties still change the names of candidate submitted by it to INEC. By the provisions of Section 33 of the Electoral Act 2010(As Amended), once a political party sends the list of its nominated candidates to INEC, a political party cannot substitute candidate except in the case of death or withdrawal by a candidate.

However, this provision of the law is always beached in each of the elections held in the Country. It is the practice of Political parties to substitute names of candidate without giving convincing reasons. In *Bwacha v Ikenya & ors*²⁰⁸ It was also held by the court of Appeal that a political party must state the reasons for the substitution and such reasons must be cogent and verifiable.

To avoid illegal substitution of candidates by political parties, Section 35 of the Electoral Act 2010(As Amended) provides that a candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the

²⁰⁷ Udom U.O., Nigeria's Electoral Laws Issues and Matters Arising, First Edition, Princeton & Associates Publishing Co. Ltd.Lagos,2014. p. 96

²⁰⁸ (2011) LRCN Vol. 191 (Pt. 4)

political party that nominated him for the election and the political party shall convey such withdrawal to the commission not later than 45 days to the election.

In *Odedo v INEC*²⁰⁹, the Court held that a political party which intends to change a nominated candidate must ensure that it complies with the statutory provision of the Act. In *Ombugadu v CPC*²¹⁰ the court held that ;“...Even the political party that submitted the candidates name cannot for any reason withdraw, cancel, substitute or nullify such nomination and or sponsorship except as provided for under S.33 of the Electoral Act.”

4.9 CASES ON NOMINATION AND SUBSTITUTION OF CANDIDATES

The Electoral Act only recognizes candidates that took part in the whole stages of the nomination process and names thereby submitted to INEC. Therefore, the Courts only entertain pre-election disputes where there is a conclusive primary election. Section 141 of the Electoral Act 2010(As Amended) provides that; An election tribunal or court shall not under any circumstance declare any person a winner at any election in which such a person has not fully participated in all the stages of the said election”

All stages of the election include being nominated and a candidate’s name submitted to INEC, and participation at the poll. However, there are cases where issues within political parties come up before nominations, but the Courts have held that it has no jurisdiction over pre- primary election disputes, no matter what happened in a political party’s nomination process. The Courts regard pre- primary election disputes as disputes before nomination of candidates. They are issues which spring up either between party executives, issues on membership of the party, nomination, payment of dues which qualify an aspirant to be nominated etc.

²⁰⁹ (2010) 9 NWLR (pt.1200)602

²¹⁰ (2013) 3 NWLR(pt.39) P1-72

In *PD.P v Sylva*²¹¹, the Supreme Court dismissed the case of Timipre Sylva seeking an order of the Court to declare him as the gubernatorial candidate of the PDP held in February 2011. The Supreme Court held that ex-Governor Sylva's request amounted to an invitation to dabble into partisan politics, an intra-party dispute of the PDP.

Sylva the 1st respondent was no longer the PDP's candidate for gubernatorial elections held on 12/2/12. He did not take part in the primaries for that election which was held on 19/11/11 but won the primaries conducted in January 2011 and his name forwarded to PDP as the PDP's candidate for the elections slated for April 2011. With the cancellation of the elections of April 2011, the primaries conducted in January 2011, is no more of any relevance. Sylva however, wanted the Court to act based on the primary election which he won (then a serving governor) conducted by the party in January 2011 in anticipation that the governorship election would hold later that year.

Before the election, for which he (Sylva) was to stand as the party's candidate could be held, Sylva got a judgment of a Federal High Court, Yenagoa, extending his tenure. The Court of Appeal upheld the judgment and held that Sylva's tenure would end on January 28, 2012.

In view of the development, INEC rescheduled the governorship election for February 2012. The PDP was prompted to conduct a fresh primary, for which Sylva bought form, got screened along with other candidates, but was dropped by the party. The primary was won by Henry Seriake Dickson. Sylva challenged the party's decision to drop him. The case got to the Supreme Court, which held that Sylva, having participated in the process leading to the conduct of the fresh primary (by buying form and submitting himself for screening), Sylva was deemed to have abandoned his earlier nomination for the 2011 planned election that was cancelled.

²¹¹ (2012) 13 NWLR (pt.1316) 85

Not satisfied, Sylva returned to court in an attempt to reclaim his earlier nomination for the election that was rescheduled, and to claim the benefits of the victory recorded in the election held in 2012 by the PDP. Justice Ngwuta, in the judgment noted that the election for which the appellant won the primary was cancelled outright. He observed that, “He was not a party to the primaries for the election to which he makes the absurd claim of applying the result of primary, which was abandoned when the election for which it was conducted was cancelled.”

In a unanimous judgment, the apex court held that it was within the exclusive preserve of a political party to choose its candidates for election. The Supreme Court struck out the suit on the ground that it did not have the jurisdiction to hear the case saying that the nomination of candidates for elective positions were the exclusive preserves of political parties.

Justice Fabiyi said that; “Courts in Nigeria do not have jurisdiction to question the nomination and sponsorship of a candidate for election. Furthermore, the primaries that the 1st respondent (Sylva) won in 2011 fades into insignificance since the elections for which they said primaries was conducted were cancelled”.

The Supreme Court also made further clarifications on the difference between Sylva’s case and that of Rotimi Amaechi, when it noted that the case of Sylva was clearly distinct from the decided case-law in *Amaechi v. INEC*, emphasizing that whereas Amaechi contested the primaries and won, but was barred from contesting the general elections, his party, the PDP was unable to give cogent and verifiable reasons why he was not allowed to contest the election. The apex Court clarified further that in the instant case, “Sylva contested primaries in January 2011 for a general election fixed for April 2011. The general election was cancelled. Fresh primaries were fixed by his party, but he was not allowed to contest.

In Amaechi’s case, he was barred from contesting the general election. In this case Governor Sylva was barred from contesting primaries of his party. Governor Sylva

having participated and fulfilled all the conditions was disqualified, The Supreme Court said Sylva was not an aspirant and so lacked the locus stand to bring an action before Court. The Supreme Court consequently struck out the suit saying it doesn't have jurisdiction to entertain the suit. It however, introduced another rule saying it has no jurisdiction on preprimary Election disputes. The Supreme Court held that an aspirant must be someone who actually participated in the primary election of the Political party.

Despite the decisions in *Ugwu v Ararume*, and *Amaechi v INEC*, the Supreme Court in Sylva's case held that *Onouha v Okafor* and *Dalhatu v Turaki* were still relevant and not justiciable with respect to issues of nomination and thus falls under pre-primary affairs of Political parties²¹².

Per Rhodes at page 634 paragraph A stated;

The primaries conducted on 19 November, 2011 wherein the 1st Respondent was not allowed to by the PDP to contest is a pre-primary election affair of the PDP which no Court has jurisdiction to question: Onouha v Okafor,

Even in *Dalhatu v Turaki*²¹³, the trial judge called for a re amendment to the decision of the Supreme Court decision in *Onouha v Okafor*²¹⁴. But the Supreme Court faulted the trial Court's decision and took it as an exception. Sections 221-229 of the Constitution provided for Political parties, and no Section from 221-229 excludes the affairs of Political parties from Judicial scrutiny²¹⁵. This is one of the reasons why the Courts should revisit the principle that intra –party disputes are not justiciable and

²¹² Udom U.O., Nigeria's Electoral Laws Issues and Matters Arising, First Edition, Princeton & Associates Publishing Co. Ltd, Lagos, 2014. p. 104

Dalhatu v Turaki are thus very relevant in resolving this issue as they are instructive.

²¹³ (2003)15 NWLR(pt.843)310

²¹⁴ (1983)SCNLR 244

²¹⁵ Nwankama B., and Ngozi O., Laws Governing Elections and Petitions in Nigeria, Edu-Edy publications, Owerri, 2007 p.72

cannot be under its scrutiny. The right of access to Court is a Constitutional right and only the Constitution should take it away and not judicial pronouncements²¹⁶.

This therefore means that the Supreme Court in Sylva's case did not regard the cases of Amaechi and *Ugwu v Ararume* as guiding cases that pre-election matters are justiciable before the Court. Per Rhodes-Vivour JSC in trying to justify the reason for the decision of the Court in Sylva's stated that in Amaechi's case, he contested the primaries and won but was not allowed to contest in the general Elections. While in Sylva's case he contested the primaries in January 2011 for which the general election was cancelled. Fresh primary was fixed by his party but he was not allowed to contest. Per Rhodes JSC sees no similarity in the two cases. But there is a similarity. The similarity is that there could be injustice in not allowing Governor Sylva to contest in the primaries. Why was he stopped from contesting? What are the issues on ground? These are issues the Supreme Court should ask in pre-primary issues in a Political party.

The Supreme Court held that a political party can ban or prevent any member from contesting in its primaries as it has the right to sponsor candidates. Invariably, it means that political party can screen and refuse to submit the name of a candidate for whatever reason and the Court will still regard the issue before it as non-justiciable no matter how qualified a candidate might be²¹⁷. The Supreme Court (in Sylva's case) stated that;

The right to nominate or sponsor a candidate by a political party is a domestic right of the political party. A political matter within the sole discretion of the party. A member of the party has no legal right to be nominated /sponsored by his party. A Court thus has no

²¹⁶ *ibid*, p.73

²¹⁷ Per Rhodes –Vivour at page 634-635, paragraph A-A

jurisdiction to determine who a political party should sponsor.

Nomination or sponsorship for election is a political matter solely within the discretion of the party and this is so because the sponsorship or nomination of a candidate is a pre-primary election affair of the political party. The PDP has the right to ban the 1st Respondent or any of its members from contesting its primaries if it so desires.

Any candidate who does not fall within the definition of an aspirant by the Court, who does not have his name submitted to INEC, has no right to approach the Court even if he was unlawfully excluded. He cannot complain of irregularities, non-compliance with party Constitution, nor criminal actions.²¹⁸ Section 33 is not after how a candidate's name got into the list submitted to INEC, whether legally or illegally, however, the extent of the protection given to an aspirant in Section 87(9) is, it gives protection where a candidate's name got to INEC and substituted illegally.²¹⁹

In *Ehinlawo v Oke*²²⁰ Lakolu Sodipe JSC stated that the Supreme Court has no jurisdiction to enquire into the question of who is the right candidate of a political party once the candidate has been nominated. The exception to the rule has to do with substitution of a candidate already nominated and submitted to INEC. However, the Supreme Court assumed jurisdiction and decided the actual nominated candidate of the party. In this case, the appellant contested for the Senatorial seat in the primary election of his party in Ondo State. The respondent won the primaries, but the name of the appellant was submitted to INEC for screening for the senatorial seat. The PDP wrote a letter to INEC for the error in substitution which INEC accepted and put the name of the respondent. The appellant instituted an action at the Federal High Court

²¹⁸ op cit n.48 p.112

²¹⁹ ibid, p.190

²²⁰ (2008) All FWLR(pt. 442)p.1007,at 204,paragraph F-H

that the party had no right to remove him and wanted his name returned on INEC list. He was granted, but it was appealed. On appeal, the Court of Appeal reversed the decision of the trial Court. On appeal to the Supreme Court, the Court was more concerned on why the appellant's name was substituted and reversed the decision of the Court of Appeal by restoring the appellant's name on INEC list since the party did not give cogent and verifiable reason for the substitution.

Per Onnoghen JSC stated that;

I have to emphasize the point that Section 34(2) seeks to protect the right of sponsorship of a candidate whose name had been submitted to the 3rd respondent by the 2nd respondent as its candidate for any election irrespective of how he emerged as the candidate ... it really does not matter how the name of the appellant got into the list of candidates. The fact remains that it is there and he was duly screened for the election before the application to substitute... The name of the appellant might have gotten in the list by dubious means but that is not the issue before the Court... once the 2nd respondent submitted the name of the appellant that is the end of the matter as the Court is without jurisdiction to inquire as to how the appellant made the list.

In *Akpan v Bob*²²¹, the candidate was not properly substituted as the candidate of the PDP in Akwa-Ibom North East Senatorial District. The Court held that there is a difference between a claim that one candidate has been properly substituted for another, and a claim on which of one of two candidates was nominated by a political party. To change a candidate is different from two candidates saying 'I won the

²²¹ (2010) 17 NWLR (pt.1223) 55 at 502-503, paras.G-C pg1052-1053, paragraph D-A

primary election'. The Supreme Court however struck out the suit. It has become the practice of political parties to hold parallel primaries in the absence of INEC and submit the two results to INEC despite the provision of Section 85(1) of the Electoral Act 2010(As Amended), which requires every registered political party to give a 21day notice to INEC of its intention to conduct any convention, congress, conference or meeting convened for the purpose of nominating candidates for any of the elective offices specified under the Electoral Act 2010(As Amended).

The case of *CPC v Lado Dan Marke*²²² is a locus classicus case on parallel primary election where the Supreme Court refused to assume jurisdiction. In this case, some party members' wrote a letter to INEC on Dec 24th 2010 giving notice to the commission of its intention to conduct primary Elections for April 2011 National Assembly, State Assembly and Governorship Elections in Katsina State. According to the time-table, all primary elections for Katsina State would conclude on 13th January, 2011 and submission of the list of successful candidates to INEC to be made the following day (January 14, 2011). The CPC also notified INEC of the constitution of a committee under Colonel Jibril Mohammed Hassan (Rtd), saddled with the responsibility of organizing the primary elections. The election took place on the said day (13th January, 2011) and Aminu Masari and others contesting for various National and State Assembly offices emerged victorious. On January 14th 2011, the CPC National Congresses Committee under Dr.Lanre Tejousho submitted names of winners of the primary elections to INEC after ratification of the list by the NEC and Board of Trustees of the Party. Dissatisfied with the process of the nomination process, 43 candidates of the party in the state, led by Lado Danmarke, dragged INEC, the party and its chairman, and Prince Tony Momoh before a Federal High court in Abuja, contending that they were the legally elected candidates of the party in the state. On February 15, 2011, the trial judge Abdul Kafarati granted the relief sought by the plaintiffs, and they took part in the April polls. The CPC leadership went before the appellate court and upturned the lower court's judgment.

In its notice of appeal filed on March 1, 2011, CPC had among other issues for determination which were for the higher court to determine whether:

²²² (2012) All FWLR (pt.607) 598

- a) the trial court was right in holding that the 1st to 43rd respondents have sufficiently proved that they are candidates of the CPC in Katsina State;
- b) a miscarriage of justice has not been occasioned by the wrong conclusion of the trial court;
- c) the trial court was right in granting all declaratory and injunctive reliefs sought by the Respondents regard being had to Sec 87 of the Electoral Act and the CPC Constitution,
- d) the failure of the trial court to consider issues for determination raised by the appellants did not occasion a miscarriage of justice.

Delivering its judgment on April 20, 2011, the Court of Appeal sitting in Abuja agreed with all the arguments of the CPC and consequently set aside the judgment of the Federal High Court. In a unanimous decision delivered by Justices of the Court of Appeal, the Court held that by the provisions of the Electoral Act 2010(As Amended) and the 1999 Constitution (As Amended) the party at the National Level was the only organ empowered to organize primary elections and not any of its branches and therefore the Katsina State Chairman of the CPC cannot usurp the powers conferred on the National Executive committee, and any such act, without any evidence he was delegated to so act is outside statutory provisions and such act is invalid.

The appeal Court equally noted that: the trial court (Federal High Court) was wrong in relying on the primary elections of January 15, 2011, to hold that the 1st to 43rd respondents have sufficiently proved that they are the candidates of the CPC in Katsina State for the April 2011 general election. The appellate court held that the issue of who should be candidate of a political Party at an election is a party matter which should be determined by the rules of its Constitution and provisions of the Electoral Act.

At the supreme Court, it held, courts do not have right to nominate candidates for or on behalf of political parties, as that is one of the cardinal responsibilities of political

parties as enshrined in the Constitution which stipulates that candidates to all elections must be members of and sponsored by a political party. The Supreme Court held that;

if the right claimed by the appellant and in dispute between the parties arose from the primaries of 15th January 2011 alone, it will be a different case. But Once there arises a dispute as to which of the two primaries a right of candidature on the parties to represent a political party in an election, the matter is taken outside the purview of Section 87(4)(b)(ii),(c)(ii)(9) of the Electoral Act 2010(As Amended) ²²³. The Court will normally be involved where the provisions in the Electoral Act or the Party's Constitution has not been complied to'. According to the Supreme Court's panel, 'court's do not have right to nominate candidates for or on behalf of political parties, as that is one of the cardinal responsibilities of political parties as enshrined in the constitution which stipulates that candidates to all election must be members of and sponsored by a political party'²²⁴.

Consequently the suit was struck out for lack of jurisdiction. The Supreme Court held that it is not the duty of the Court to choose which primary election is valid, and thereby struck out the case. The decision in this case is of the effect that the Court has no power to determine factional candidates of a political party where there are two candidates to be chosen by a political party. The decision in this case is a reinstatement of the position of the Court in *Onouha v Okafor* and *Dalhatu vTuraki* which have ceased to be a guiding principle on the justiciability of pre-election disputes. However, in the case of *Emeka v Okadigbo*²²⁵, two primary elections were

²²³ for emphasis

²²⁴ for emphasis

²²⁵ (2012)18 NWLR (pt.1316)p.55

also held. One was witnessed by the State executive committee, and the other was witnessed by the National Executive Committee. The claim of the appellant was on the candidature of the Anambra North Senatorial District. The contention was who among John Okechukwu Emeka, Lady Margery Okadigbo and Senator Alphonsus Uba Igbeke emerged the winner of the Senatorial seat in the State. The Federal High Court made an order restraining the INEC from accepting any name other than the name of the appellant pending the final determination of the suit.

INEC defied the order and accepted the name of the respondent as the candidate of the PDP.

The issue of the authentic flag bearer was not resolved when elections were held but the name of the 1st respondent was included in the result of the election, his name written against the result of the PDP and the phrase “Election not included” was written against his name.

The tribunal decided in favor of the respondent. On appeal, the appellant asked the Court of Appeal to strike out the decision of the tribunal. The appellant went to the Supreme Court where the matter was decided in favor of the appellant. Rhodes Vivour JSC held on the duty of court to examine if the conduct of the primaries were conducted accordingly where a candidate complains against it stated that;

where a political party conducts its primaries and a dissatisfied contestant at the said primaries complains about the conduct of the primaries, the courts have jurisdiction by virtue of the provision of S. 87 (9) of the Electoral Act 2010 to examine if the primaries were conducted in accordance with the Electoral Act, the Constitution and guidelines of the party.²²⁶

The reason is simple the court will never allow a political party to act arbitrarily act as it likes. A political party must obey its Constitution.

²²⁶ for emphasis

In *Chief Francis Uchenna Ugwu & ors v. Peoples Democratic Party & ors*²²⁷, the Supreme Court on the 20th day of February, 2015, dismissed the case saying it had no jurisdiction to entertain the issue on the two primary elections held. The facts of the case reveals that the plaintiffs claimed to have participated and won the primary elections conducted by the Peoples Democratic Party for the nomination of candidates in respect of the Enugu North Senatorial District, Igboeze North/Udenu Federal Constituency and the Udenu, UzoUwani and Nsukka East Constituencies of Enugu State respectively, for the 2011 general Elections but whose names were not forwarded by the Party to the (INEC) .They instituted an action by originating summons at the Federal High Court Enugu Suit No. FHC/EN/CS/47/2011, seeking declaratory reliefs that they were the candidates entitled to have their names submitted by the 1st defendant to the 2nd defendant as the candidates for the said elections. The 3rd to 7th Defendants whose names the party sent to INEC to contest the election applied to be joined and the application was granted. The main issue in this case was the plaintiff had their names substituted before their names got to INEC, but the Supreme Court still regarded the matter as a pre-election dispute which it has no power to adjudicate upon.

In *Adebayo v PDP*²²⁸, two primary elections were held as a result of the faction in the Ogun State PDP. One was supervised by INEC, and the other was conducted by the State Executive of the PDP.

The Federal High Court in Lagos gave an order restraining the PDP from dissolving the PDP executive in Ogun State. It also gave an order restraining the INEC from recognizing as valid or publishing any list of PDP candidates, except the list of candidates elected at the PDP primaries conducted in Ogun State. The Court gave an order that no other primaries should be recognized which is not conducted by the

²²⁷ SC. 130/2013

²²⁸ (2013) 17 NWLR(pt.1382) SC

plaintiff. Based on the Court order, INEC gave recognition to the primaries by the Buruji Kashamu led faction of the party. Which invariably means the Court recognizing the primaries chosen by INEC .

In *Orhena Adugu Gbileve & anor v Mrs. Ngunan Addingi & anor*²²⁹, the Court entertained the pre-election matter before it. The Plaintiff/1st Respondent won the primaries as the candidate to represent Buruku Constituency of Benue State House of Assembly in the general election. Irrespective of the press release confirming the Plaintiff/1st Respondent's emergence as the winner, the State Secretariat of the party replaced her name with the 1st Respondent/Appellant's name as having won the election and a certificate of return was issued to him. Dissatisfied, Plaintiff/1st Respondent filed an originating summons at the Federal High Court. Judgment was entered in favor of the Plaintiff/1st Respondent.

The Court ordered that the Plaintiff/1st Respondent's name be returned as the lawful aspirant and that she should be issued with a certificate of return. The Respondents/Appellants' appeal to the Court of Appeal was dismissed and the judgment of the trial court affirmed. On appeal to the Supreme Court, it affirmed the decision of the Court of Appeal.

In *Emenike v PDP*²³⁰, two primary elections were held for the Abia State Governorship candidacy in the 2011 general elections .One was conducted by the National Executive Committee of the Political party, and the other which produced the plaintiff as the winner was conducted by the by the State Executive Committee of the Political party. The appellant filed an originating summons at the FHC Abuja that he was the valid candidate of his political party. The Supreme Court still reiterated that issues outside Section 87 of the Electoral Act 2010(As Amended) relating to nomination of candidates of a political party are regarded as the domestic affair of a

²²⁹ SC 193/2012

²³⁰ (2012) 12 NWLR (pt.1315) 556

party and are generally treated as non-justiciable. The Court held that a member who is aggrieved has no cause of action which can raise any question as to the right and obligations of the member determinable by the Court of Law. But where an aspirant complains about the conduct of the primaries, then the Court has jurisdiction by virtue of section 87(9).

In *Engr Frank Okon v INEC*²³¹, the PDP in Awka conducted primary elections for Governorship aspirates in Akwalbom. Three persons aspired for the PDP ticket in the state comprising of Chief Godswill Akpabio, Engr Frank Okon, and Imo Udo. Only Godswill Akpabio was chosen while the two others were excluded from contesting the primaries.

Petitions were however written by the other two contenders which led to the cancellation of the previous primaries. A re-run was fixed 15th of January 2011 which still produced chief Akpabio as the winner. Engr Frank Okon alleged that he wasn't given notice of the re-run primaries which produced Chief Akpabio, and therefore he didn't participate. He approached the Federal High Court Abuja seeking for a nullification of the re-run primary. However, Chief Akpabio challenged the locus standi of Mr Frank Okon not having participated in the primaries, and so the Court lacked the jurisdiction to entertain the matter being a pre-primary election matter. While Mr. Okon (the plaintiff) relied on *Amaechi v INEC* that pre-election matters are justiciable, the defendant relied on the supreme Court decisions in cases of *PDP v Sylva* and *Lado v CPC* that pre-elections disputes are not justiciable. The Federal High Court dismissed the case and held that it has no jurisdiction to entertain the matter being a pre-primary election dispute. The Federal High Court based its decision relying on the case of *PDP v Sylva* and *Lado v CPC*. In this case, Engr Okon bought the expression of interest form, he was screened and granted clearance

²³¹ SC.757/2013

certificate by the PDP. He was excluded from the first primary, and was again not notified of the re-run primary. One would expect that Supreme Court would do thorough investigation into the case, rather than tagging it a pre-primary election dispute which is the concern of the political party. There can be flagrant abuse of party guidelines or Constitution, yet the Courts still choose not to meddle into the affairs of political party and grant a member his right once a candidate's name is not on the list sent to INEC. The Supreme Court held that the appeal lacked merit and dismissed the case.

Evidence that the judges are aware of party irregularities is in the words of Per Onnoghen JSC in *Ehinlawo v Oke*²³² where he stated;

It is however, unfortunate that a winner of the primaries conducted by the 2nd respondent in accordance with its Constitution and guidelines was prevented from being submitted as candidate for the election in a democracy, while the candidate who lost became the sponsored candidate. There is nothing to be done about that having regards to sad state of the law and substitution of and the facts of this case. This case represents the stark realities of the Nigerian situation, particularly, as it relates to the attitude of the political class which sees election into any position as a matter of life and death and is consequently ready to do anything to attain the ambition.

²³² (2008) LRCN Vol. 165 (pt.177) at p.1053 , paras C-D

The appellant in this case a distinguished Senator, simply exploited the state of the relevant law to his advantage irrespective of the fact that he lost the primary election and his appeal against same was refused by the People's Democratic Party (PDP). The Court still stated that pre-elections disputes outside the realm of substitution of names to INEC are not the business of the Court, and thus not justiciable. It is clear from the wordings of Per Onnoghen JSC that the Courts are aware of the lacuna in the Law (when he stated the sad state of the Law) but that there is nothing to be done about it. From the analysis of the judgments in *Lado v CPC*²³³, and *PDP v Sylva*²³⁴, the attitude of the Supreme Court in both cases shows that pre-primary election disputes are non-justiciable; it is a preprimary election affair, within the powers of political parties, portraying that the decisions in *Onouha v Okafor* and *Dalhatu v Turaki* still exists in the Courts.

Analyses of the cases discussed reveal that the principles in *Onouha v Okafor*²³⁵, that questions of a political nature is exclusively for the political party, and that intra-party disputes within political parties are the domestic affairs of political parties still exists in the Courts. The attitude of Courts in pre-election disputes especially as it relates to substitution of candidates, and parallel primaries show that the Courts still regard pre-election disputes as non-justiciable.

A careful observation shows that the Courts are still restrictive in getting involved on issues of nomination despite the provision of Section 87(9) of the Electoral Act 2010(As Amended), which has widened the jurisdiction of Courts on pre-election disputes. By the provision of section 87(9), the Court ought to exercise jurisdiction to question all pre-election matters before it, issues of who emerged the winner in two primary elections, disputes between candidates, what transpired on the day of the

²³³ (2012) All FWLR (pt.607) 598

²³⁴ (2012) 13 NWLR (pt.1316) 85

²³⁵ (1983) SCNLR 244

primaries, investigate why preprimaries are cancelled, why a first primary is cancelled if there were two²³⁶. The mischief for which Section 87(9) was intended to cure will be defeated if the Courts continue to shy away from determination of the issue of nomination and sponsorship of candidates in all matters.²³⁷

In *Amaechi v INEC*²³⁸, Oguntade JSC stated that;

When a political party later asks to substitute a candidate, it does so against the background of the result of the primary election. If there is a problem with a candidate who comes first, then the party will opt for the 2nd and later 3rd etc in that order. There is simply no room for a candidate who never contested a primary election in such setting to emerge a party candidate. This seems to me a praise worthy attempt to enthrone intra-party democracy in order to ensure that our democracy is truly reflective of the people's choice.

Suffice is to say that while the Courts entertain pre-election disputes in some instances, in some other instances, it dismisses pre-election disputes and refuse to entertain the issue for lack of jurisdiction to entertain such matters.

The judicial attitude of Courts on the justifiability of pre-election disputes as supported by decided cases which were reviewed shows that the Courts have consistently held that they don't have jurisdiction on the internal affairs of political parties. Gross misconduct may be done within members of political party, substitution

²³⁶ Udom U.O., *Nigeria's Electoral Laws Issues and Matters Arising*, First Edition, Princeton & Associates Publishing Co. Ltd, Lagos, 2014 ,p. 194

²³⁷ Ibid, p.195

²³⁸ (2008) 33 NSCQ 332 at 585

within party members outside the purview of INEC, but is not justifiable within the confines of the Court.

On parallel primary elections, in *CPCv Lado* the Supreme Court held it has no jurisdiction to pick which of the two primary elections held is valid. While in *Emeka v Okadigbo*, the Supreme picked one of the primary elections held and declared Mary Okadigbo as the valid candidate of the party. However, on pre-primary election disputes, the Courts have consistently held that it has no jurisdiction to deal with pre-primary election disputes. The attitudes of the Courts reveal inconsistency in the decision of the Supreme Court looking at these cases. The attitudes of Courts in view of these cases show that *Onouha v Okafor* is still the guiding case and the basis for the decision of Courts when they refuse to assume jurisdiction in pre-election disputes.

Oguntade JSC in *Ugwu v Ararume* stated;

...My humble view on the decision in Onuoha v Okafor...is that it has ceased to be a guiding light in view of the present state of our political life. I have no doubt that the reasoning in the case might have been useful at the time the decision was made. It seems to me, however that in view of the contemporary occurrences in the political scene, the decision needs to be viewed (sic) or somewhat modified. If the political parties, in their own wisdom had written it into their Constitutions that their candidates for election would emerge from their party primaries, it becomes unacceptable that the court should run away from their duty to enforce compliance with the parties Constitution....An observer of the Nigerian political scene today easily discovers that the failure of the parties to ensure intra-party democracy and live by the provisions of their Constitutions as to the emergence of candidates for elections is one of the major causes of the serious problems hindering the enthronement of a representative government in the country.

In the same case he stated that;

the court has a duty to enforce compliance with the Constitution of political parties, such is not a domestic issue, it seems to me however, that in view of the contemporary occurrences in the political scene, the decisions needs to be reviewed or somewhat modified...

If the political parties in their own wisdom had written it into their Constitution that their candidates for election would emerge from their party primaries, it becomes unacceptable that the courts should run away from the duty to enforce compliance with the provisions of the parties Constitution for these political parties. Indeed the Court, in its ordinary duties must enforce compliance with the agreement reached by the parties in their contracts

The judicial approach to pre-election matters is certainly faulty. The Courts interfere in the contractual agreement of private persons, and hold each party to a contract bound by his or her promise. Why then would the Court not interfere in the affairs of political parties, who are bound under a Constitution, and recognized in the Constitution of Federal Republic of Nigeria. What then is an aggrieved expected to complain of before the Court if not issues of nomination and sponsorship on the day of the primaries and the various manipulations embarked.²³⁹.

²³⁹ op cit n. 73 p.195

There is nowhere in the Constitution where the Courts are barred from entertaining pre-election disputes or intra-party disputes. Section 6(6)(b) gives a wide range of power upon which the Courts can entertain pre-election disputes.²⁴⁰

The Courts should protect the interest of party members in political parties. In *CPC v Lado Danmarke*, the plaintiffs approached the Court because they thought they could air their grievance. In *P.D.P v Sylva*, the Court also buttressed its position on preprimary election disputes. A political party candidate who pays the prescribed fees has shown his interest and ought to be protected by the Court.

The position of the Courts is ok for if they ensure that Section 33 and 87(9) is adhered to on substitution and adherence to Political party guidelines in nomination of candidates. But the reason given by Courts that every other intra party dispute is within the confines of Political parties' gives room for several other irregularities within Political parties.

4.10 CONCLUSION

The attitudes of our courts to the concepts of the political doctrine have witnessed different phases. The few cases discussed have shown that the attitude of Courts shows that in some cases the attitude of the Court is to entertain a pre-election dispute before it, and willing to carry out its role of judicial review, at some times and in some cases, it is reluctant to do so. A nominated candidate has a right to seek redress in the Courts, but several cases as noted have been struck out from the courts on the basis lack of jurisdiction of courts on pre-election matters. However, the court has been empowered by the introduction of S. 87 (9) of the Electoral Act to see that the guidelines of a political party are not breached and thereby ensuring that no substitution of candidate by political party.

²⁴⁰ Nwankama B., and Ngozi O., *Laws Governing Elections and Petitions in Nigeria*, Edu-Edy publications, Owerri, 2007 p.87

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 SUMMARY

The Constitution of the Federal Republic of Nigeria, 1999(As Amended), the Electoral Act 2010(As Amended), the Independent National Electoral Commission, the Constitution of the Political parties, and rules of Court were found to be rules or framework which form the basis of pre-election matters. In Nigeria it is this legal framework that set out the modalities for Elections in Nigeria.

Candidates must emerge through nomination and selection of aspirants by political parties. Political parties have their Constitution, rules and guidelines which they must adhere to. The general and specific provisions of the Law dealing with nomination of candidates seek to see that a process is done in line with the laid down guidelines. The role of Political parties and INEC in the process as seen cannot be over emphasized. Cases questioning the roles of political parties and INEC in the process was looked at .It is revealed that the process in most cases is not followed.

An aspirant who has the basic requirement as set out by the Constitution, INEC, and the Electoral Act is eligible to vote and be voted for. Meeting these requirements makes an aspirant eligible to contest for nomination of his Political party to any elective office. Disputes abound where an aspirant who is eligible to contest is substituted. Most political party disputes bother on nomination and substitution of candidates. Where such pre-election disputes are before the Court, the Courts as a general rule are hesitant in entertaining intra-party disputes. The Courts in most cases, strictly entertain pre-election disputes where there is a violation of Section 33 and 87(9) of the Electoral Act 2010 (As Amended).

The central theme of the dissertation did a vivid and critical appraisal of the judicial attitude of Courts to intra-party disputes on nomination of candidates in Nigeria. A review of selected cases was done with a view to access the attitude of Courts in pre-election disputes. A wholesome and specific consideration of relevant provisions of the Law was adopted in the analysis. The consideration of these specific cases brought out the attitude of Courts as it concerns nomination of candidates in Nigeria. The attitude of Courts is hinged on the distinction between a candidate which a political party would sponsor at an election, and a candidate of a political party already on the list of candidates submitted to INEC. The candidate a political party would sponsor is still regarded as political party issue and outside the purview of judicial powers conferred on the Courts. Courts rely strictly on sections 33 and 87(9) to entertain pre-election disputes.

By section 33 of the Electoral Act 2010(As Amended), it means that Courts can only entertain issue of substitution of a candidate already submitted to INEC. Issues of irregularities which went wrong in the primaries, substitution of names before reaching INEC are not the concern of the Courts. How Political parties arrived at the names it submitted to INEC and the conflicts that may arise are for the Political parties to handle or resolve. Primaries must have been done and there was unlawful exclusion or substitution.

The Courts based on Section 87(9) do not entertain issues of inconclusive primary elections even where there are other issues. The onus lies on political parties to conduct primaries in line with the laid down rules by INEC, and the Electoral Act, and choose its candidates for any elective office. The judicial attitude is that Courts will not interfere in political party issues. The effect of this non-interference in intra – party disputes of political parties is that there still exist inadequacies in the provisions of the Laws.

5.2 CONCLUSION

In view of the above, it was the discovery of this research that the attitude of courts to intra-party disputes on nomination of candidates in Nigeria is non-interference in political party activities. These positions have put to question the role of the Courts in the Electoral process under our nascent Democracy. The judgments of the Courts are a part of the developmental process of our nascent democracy. The contradictory decisions of the Courts in some instances on pre-election disputes as revealed in this research has failed to address clearly and conclusively the issue of jurisdiction of Courts in pre-election disputes. This unclear decision of the Courts poses a great danger. This is because unless there is a clear decision on the roles of political parties and INEC in the process of nomination of candidates for an election, the issue will continue to linger and will continue to remain a burden for the law, political parties, candidates, INEC, and the Courts itself. The Courts have held in several cases on pre-election disputes that it has no jurisdiction forgetting their roles in the enforcement of Electoral rights. The Courts are resorted to for resolution of disputes; they determine the rights and obligations of persons coming before it. They are expected to double this effort for the protection of the rights of candidates who are seeking for redress.

5.3 FINDINGS

It is the finding of this research that that the attitude of Courts to intra-party disputes on nomination of candidates is in two fold. While on one side there is the attitude of outright refusal by the Courts to entertain pre-election disputes, on the other hand Courts assume jurisdiction in pre-election matters or disputes not to pick candidates for political parties but rather to determine whether substitution is based on Section 33 and 87(9) of the Electoral Act 2010 (As Amended), that due process was followed. The resultant consequence of these two judicial attitudes is that, there still exist

inadequacies in the provisions of section 33 and 87(9) of the Electoral Act 2010(As Amended). There is therefore no clear cut position of the law.

From the cases reviewed, there are contradictions and inconsistencies in the decisions of Courts on pre-election disputes especially on nomination and substitution of candidates. The cases reveal the conflicting judgments of the courts especially the appellate Courts. It has also been observed that the principle of judicial precedent is not being observed by the Courts in pre-election disputes.

From what has been discussed so far, the following represents the major findings/observations:

1. It is observed that there are inconsistencies in the decision of Courts on pre-election matters as it relates to nomination of candidates. While in some cases the Courts have held that pre-election disputes are justiciable and assume jurisdiction, in some cases and in most cases the courts are hesitant to do so. For instance in *CPC vLado Dan Marke*, the Supreme Court dismissed the case and held that it has no jurisdiction to entertain issues on parallel primaries, while in *Emeka v Okadigbo* it assumed jurisdiction even though it was also a case of parallel primaries .Disputes on elective positions within political parties are not entertained by the Courts which in most cases are the cause of parallel primary elections or substitution of the names of candidates.

The Courts have held in *Amaechi v INEC*, *Ugwu v Ararume* and several other cases that pre-election disputes are justiciable. While in the cases of *PDP v Sylva*, *Emenike v PDP*. the Courts hold that political party activities are the concern of Political Parties, which is left for them to handle or resolve.

2. The justiciable disputes the Court entertain are only issues on Sections 33 and 87(9). Courts entertain pre-election disputes only when names of nominated

candidates have been submitted to INEC and party guidelines or rules have been flouted in the process. Every other political party issue before the submission of names of candidates to INEC is regarded as non –justiciable and Courts do not handle such pre-election matter no matter what transpired in the party.

Courts do not take cognizance of other provisions of the Electoral Act 2010(As Amended) which may be breached, but only rely on section 33 and 87(9) of the Electoral Act in settling pre-election matters. A political party may breach Section 31 of the Act which states that every political party should submit the list of its candidates 60 days before the election to INEC, or a political party may refuse to give notice of its convention or congress in breach of section 85(1), which provides for 21 days notice to INEC, or even change the date or venue of the convention or congress which always leads to parallel primaries or substitution. Where these issues are before the Court, they are thrown out as intra party issues for the party to resolve.

3. The Electoral Act provides that, aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party. However, in most cases candidates who didn't score the highest number of votes, or didn't even take part in the congress or convention have their names submitted to INEC. Yet the Courts refuse to entertain such issues and regard them as domestic affairs of the political party.
4. The Courts still apply the restrictive approach in handling of pre-election disputes. Where there are two primary elections within a Political party, producing two set of results for primary election for the same elective position, the Courts refuse to choose which primary election is valid. They hold it is the duty of Political parties to ascertain which of the primary election is valid.

5.4 RECOMMENDATIONS

The Electoral Act 2010(As Amended) stipulates that the Federal High Court or the High Court are avenues to seek redress on pre-election disputes. The principle that the domestic affair of Political party remains the business of Political parties should be revisited. Charity begins at home. If Political parties are unjust in their candidate selection, and substitute aspirants at will, it goes a long way to say that they lack internal party democracy which in essence means that democratic principles cannot be achieved. The Courts should not continue to hang on to such principle which its roots can be traced to American Constitution.

In view of the foregoing, the following recommendations are made:

1. There is the need for a clear legislative reform on pre-election matters detailing out generally and exceptionally when the Courts may or may not assume jurisdiction or be involved in pre-election disputes.
2. The Courts should entertain pre-election disputes before it, as this will go a long way in addressing substitution of candidates by Political parties. As the adjudicator of disputes, Courts must ensure justice is done to all. The Courts should be proactive and in deserving circumstances invoke the spirit of judicial activism to address issues of pre-election disputes before it. The Constitution and the Electoral Act gives right to a complainant to vent his grievance. Courts should always give an avenue for pre-election disputes to be heard especially when it concerns substitution of candidates. If a candidate alleged that he was properly nominated in a duly conducted primary but was substituted with another who did not participate in any primary, the Court should look into why the substitution took place.
3. Where there are parallel primary elections held for any elective office, the Courts should assume jurisdiction in pre-election matters by determining

which of the two contending candidates of the party was produced by the party or won the primary election.

4. Justiciable disputes limit the cases which the Court is capable of resolving through judicial process, but by the provision of Section 6 (6) (b) of the 1999 Constitution (As Amended), the judicial powers of the Federation are vested in the Courts to determine all matters between persons or between Government or authority to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligation of that person. Therefore, the Courts in line with this Constitutional provision should not treat pre-election disputes as an exception in the civil rights of Political party members who are aggrieved.

BIBLIOGRAPHY

A.BOOKS

Aderemi O.T., Electoral Law And Practice In Nigeria, Aderemi Olatubora& co, Akure 2006.

Aduloju and Okobote, Impact of Judicial Activism on Electoral Laws in Nigeria, Pensbury publishers Abuja,2013.

Afe B., Election Law and Practice, Intec printers, Ibadan, First edition 2003, second edition 2007.

Akeredolu, A., (ed) Election Practice & Procedure in Nigeria: A Practitioners Guide, in Honour of Hon. Justice OlufimilolaO. Adekeye,St.Paul's Publishing House.Ibadan,2012.

Ese M., The Nigerian Constitutional Law, Princeton Publishing co., Lagos, 2010.

Joshua, E.O., Practical Guide to Election Petition, Josim Publishing House, 2011.

Ladan M.T.,(et al),Election Violence in Nigeria, A publication of Afstrag –Nigeria Supported by the Ford Foundation, Lagos,2005.

Nwabueze, B. O., The Presidential Constitution of Nigeria, Nigerian Journal of Public Administration and Local Government, Sweet and Maxwell, London, Vol.2,1984.

Nwankama B., and NgoziO., Laws Governing Elections and Petitions in Nigeria, Edu-Edy publications,Owerri,2007.

Onamade P.A., Advocacy in Election Petitions, Philade Co. Ltd. Lagos, 2007.

Nwamara T.A., Encyclopedia of Election Law and Practice, First edition, Law and Educational publishers Ltd,Abuja,2007.

Udom U.O., Nigeria's Electoral Laws Issues and Matters Arising, First Edition, Princeton & Associates Publishing Co. Ltd, Lagos,2014.

Ujo A.A., Understanding Elections .A guide for Students and Election Managers ,Anyootu Enterprises and Publishers Nig. Ltd, Kaduna, 2010.

Umaru A., Rigging Ways, The Constitution and Electoral Process, Axis Research Agency Ltd,Kaduna,2003.

B. JOURNAL ARTICLES

Emily I. Alemika & Etannibi E.O. Alemika, Democracy, Elections, and the Roles of Citizens: *Journal of Public Law and Constitutional Practice*, Vol.1,1-16,2010.

Michael B.A., Intra Party Conflicts in Nigeria: The case study of People's Democratic Party (PDP). *Journal of Sustainable Development in Africa*, Vol. 15, 2013.

Nachana'a A., Yusuf A.M., & Auwalu M., Elections, Electoral Process and the Challenges of Democratization in Nigeria's Fourth Republic, *Research on Humanities and Social Sciences* www.iiste.org Vol.4,2014.

Shamrahayu, A.A. and A.O. Sambo, Internal Affairs of Political Parties and Judicial Review: An Expository Study of the Experience in Nigeria and Malaysia, *Journal of Applied Sciences Research*, 7(13): 2257-2265, 2011.

Shehu A.T., Strengthening Judicial Intervention in Electoral Disputes in Nigeria: *African Journal of social sciences*, Vol. 2,74-88,2012.

Sulaiman Y.B, Political Parties and Democracy in Nigeria: Candidate Selection, Campaign and Party Financing in Peoples' Democratic Party. *Journal of Sustainable Development in Africa*, Vol.13, 2011.

Wahab O .E., Justiciability Theory Versus Political Question Doctrine: Challenges of the Nigerian Judiciary in the Determination of Electoral and other Related Cases, *The Journal Jurisprudence*.

C. INTERNET SOURCES

Democratization in Nigeria's Fourth Republic, *Research on Humanities and Social Sciences* www.iiste.org Vol.4, 2014.

Okhaide I.P., Quest for internal party democracy in Nigeria: Amendment of Electoral Act 2010 as an albatross. *International Journal of Peace and Development Studies* Vol. 3(3), pp. 57-75, May 2012. Available online at <http://www.academicjournals.org/IJPDS>.

Elections, Internal Party Democracy and Nigeria's Economic Development. Available at [http:// www.valuefronteironline.com](http://www.valuefronteironline.com)

Emily I. Alemika & Etannibi E.O. Alemika, Democracy, Elections, and the Roles of Citizens, 3 *Journal of Public Law and Constitutional Practice* (No. 1) 7, 1-16 (2010).

D. NEWSPAPER PUBLICATION

Orji Uzor Kalu, Political Parties and Rancorous Primaries, *The Kalu Leadership Series*, Aug 31 2013, *The Sun Newspaper*, August 31 2013.

E. PAPER PRESENTATIONS

Ladan M.T., Enforcement of Electoral Law and Electoral Violence in Nigeria: Being a paper presentation at a 2-Day Seminar on Enforcement of Electoral Law and Reduction Of Electoral Violence in Nigeria, Chelsea Hotel, Abuja, 11 - 13 July, 2006.

Nwauche E., Is the End Near for the Political Question Doctrine in Nigeria? Draft paper presented at African Network of Constitutional Law conference on Fostering Constitutionalism in Africa, Nairobi, 18-21 April, 2007.

Attahiru Jega, Inter party Collaboration, National Stability and Democratic Consolidation In Nigeria: Being a keynote address at the all Nigeria Political Parties And Political Stakeholders Summit Abuja ,June 12, 2014.

F. REPORTS

Salih M.A., The Challenges of Internal Party Democracy in Africa in UNDP: A Hand Book on Working with Political Parties, New York UNDP at 54-55,2006.

.